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No. 2347

IN THE  
**United States Circuit Court of Appeals**  
NINTH CIRCUIT

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KENDRICK STATE BANK, a Corporation,

Appellant,

vs.

FIRST NATIONAL BANK OF PORTLAND, a Corporation,

Appellee.

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Appeal from the District Court of the United  
States for the District of Oregon.

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TRANSCRIPT OF RECORD.

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County of Oxford  
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IN THE  
**United States Circuit Court of Appeals**  
NINTH CIRCUIT

KENDRICK STATE BANK, a Corporation,  
Appellant,

VS.

FIRST NATIONAL BANK OF PORTLAND, a Corporation,  
Appellee.

**Names and Addresses of Attorneys  
upon this Appeal:**

**For Appellant:**

Stapleton & Sleight,  
C. L. McDonald,  
Yeon Bldg., Portland, Ore.  
Lewiston, Ida.

**For Appellee:**

Dolph, Mallory, Simon & Gearin, Portland, Oregon

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*In the District Court of the United States for the  
District of Oregon.*

Be it Remembered, that on the 9th day of January, 1913, there was duly filed in the District Court of the United States for the District of Oregon, a Complaint, in words and figures as follows, to wit:

[Complaint.]

*In the District Court of the United States for the  
District of Oregon.*

KENDRICK STATE BANK, a corporation,  
Plaintiff,

v.

FIRST NATIONAL BANK OF PORTLAND, a  
corporation,  
Defendant.

The complaint of the above named plaintiff respectfully shows to the court:

I.

That at all times hereinafter mentioned plaintiff was and is a corporation duly organized under the laws of the State of Idaho having its place of business at Kendrick in the State of Idaho, and is a resident and citizen of the State of Idaho.

II.

That the defendant at the times hereinafter mentioned was and is a banking corporation organized and existing under and by virtue of the act of Congress for the incorporation of national banks and having its place of business and being located in the City

of Portland, State of Oregon, and is a resident and citizen of the State of Oregon.

### III.

That the amount involved in this act, exclusive of interest and costs, exceeds the sum of \$3000.00.

### IV.

That in the year 1910 the plaintiff deposited with the defendant the sum of \$10,000 which was received by defendant and retained by it under the agreement that it would be repaid to plaintiff upon the checks or drafts of the plaintiff, or upon demand. That thereafter certain sums were withdrawn therefrom by the plaintiff from time to time, and on the 8th day of February, 1912, plaintiff had on deposit with the defendant the sum of \$8283.09, the same being the balance of the deposit aforesaid.

### V.

That on Feb. 8, 1912, and on January 6, 1913, plaintiff demanded of the defendant that it pay to plaintiff said sum of \$8283.09 but the defendant has refused and neglected to pay said sum or any part thereof, and there remains due plaintiff from defendant said sum of \$8283.09, together with interest from the date of such demand, no part of which has been paid.

Wherefore plaintiff demands judgment against the defendant for \$8283.09 together with interest and costs.

C. L. McDONALD and  
STAPLETON & SLEIGHT,  
Plaintiff's Atty's.

[Endorsed]: Complaint. Filed Jan. 9, 1913.

A. M. CANNON,  
Clerk U. S. District Court.

And afterwards, to wit, on the 27 day of January, 1913, there was duly filed in said Court, an Answer, in words and figures as follows, to wit:

[Answer.]

*In the District Court of the United States for the  
District of Oregon.*

KENDRICK STATE BANK, a corporation,  
Plaintiff,

vs.

FIRST NATIONAL BANK OF PORTLAND, a  
corporation,  
Defendant.

The defendant answers to the Complaint:

I.

Defendant admits Paragraphs I, II, and III of said Complaint.

II.

Defendant denies each and every allegation contained in Paragraph IV of said Complaint, except as in this Answer to said Paragraph IV admitted. Defendant further answering said Paragraph IV alleges: That on the 11th day of June, 1910, at the special instance and request of the Plaintiff, the Defendant loaned to the Plaintiff, the Kendrick State Bank, to be repaid to Defendant in three months thereafter, with six per cent. per annum interest, the sum of

\$5,000.00, to evidence which loan the Plaintiff, said Kendrick State Bank, issued to the Defendant its Certificate of Deposit for said sum of \$5,000.00; that said sum of \$5,000.00 so loaned by Defendant to Plaintiff as aforesaid, was deposited by Plaintiff with Defendant to the credit of said Plaintiff, with the understanding that the money so loaned was to remain on deposit with Defendant's Bank subject to the checks of the Plaintiff, and any balance of such deposit remaining undrawn at the maturity of the loan was to be applied as a credit thereon.

Defendant further alleges that when said loan matured the Plaintiff applied to the Defendant for a renewal thereof upon the same terms and conditions, and such renewal was granted by the Defendant to Plaintiff. And thereafter from time to time as said loan matured, the Plaintiff applied to Defendant for renewals thereof upon like terms and conditions as the loan was originally made by Defendant to Plaintiff; that said requests were granted by Defendant and said loan renewed as aforesaid until on or about December 6, 1910, when the Plaintiff requested of the Defendant a renewal of said loan for the period of six months, and also requested of Defendant as a matter of convenience for Plaintiff's Bank, that the Defendant accept in lieu of the Certificate of Deposit that had from time to time been issued by Plaintiff to the Defendant to evidence said loan, the Note of J. W. Bradbury, the then President of said Kendrick State Bank, the Plaintiff, and who acted as the Agent

and representative of Plaintiff in negotiating said loan, which request so made by Plaintiff the Defendant acceded to and thereupon renewed and extended said loan so made by Defendant to Plaintiff for an additional period of six months and to evidence said loan Plaintiff delivered to Defendant the promissory note of J. W. Bradbury the then President of the Plaintiff.

Defendant further alleges that at Plaintiff's request said loan was again renewed and extended until December 10, 1911, when the Plaintiff applied to the Defendant for an increase of said loan from \$5,000.00 to \$10,000.00 upon the same terms and conditions as the original loan was made, and for a further extension of the time in which to repay the loan made by Defendant to Plaintiff.

Defendant further alleges that on said December 10, 1911, Defendant agreed to and did loan to Plaintiff at its request as aforesaid and upon the same terms and conditions as the original loan was made, the additional sum of \$5,000.00, making the amount loaned by Defendant to Plaintiff at the date last named, the sum of \$10,000.00, to evidence which loan the Plaintiff delivered to Defendant the note of said J. W. Bradbury, then President of the Plaintiff and its agent and representative, payable on demand or to the order of Defendant, with six per cent. per annum interest.

Defendant further alleges that when said loan was originally made and from time to time said Plaintiff deposited with Defendant as security for the moneys

loaned by Defendant to Plaintiff various collateral, all of which collateral, however, has been heretofore returned and surrendered to the Plaintiff at its request and Defendant has no collateral or other security for the moneys due it from Plaintiff.

Defendant further alleges that on or about February 8, 1912, the Plaintiff became insolvent and pursuant to the laws of the State of Idaho, the State Bank Commissioner of the said State of Idaho took control and possession of said Plaintiff, the Kendrick State Bank and its assets and proceeded to liquidate the affairs of said Bank in accordance with the banking laws of said State of Idaho. That at the time said Kendrick State Bank, the Plaintiff herein, became insolvent and was taken possession of by the State Bank Commissioner of Idaho, and until February 15, 1912, the said Plaintiff had on deposit with the Defendant a balance of \$8,283.09, (being the moneys which Plaintiff seeks to recover judgment in this action for) on which fund Defendant had a general banker's lien to secure the payment of the moneys due Defendant from Plaintiff, and which Defendant had a right to apply in payment of the indebtedness aforesaid, and that when Defendant learned of the insolvency of said Kendrick State Bank and that the State Bank Commissioner of Idaho had taken the control and possession thereof and was managing and conducting its affairs and liquidating the same, the Defendant applied said money and set off said deposit with Defendant, to wit, said sum of \$8,283.09 to the payment to that ex-

tent of the aforesaid indebtedness of the Plaintiff to the Defendant, crediting the said sum of \$8,283.09 upon the indebtedness of Plaintiff to the Defendant, and leaving still due and owing and unpaid from the Plaintiff to the Defendant on the principal of said indebtedness \$1716.91; that on February 16, 1912, there was a payment made to Defendant on account of the indebtedness due from Plaintiff to the Defendant of \$15.00, which was credited on the indebtedness aforesaid, leaving then due, owing and unpaid from Plaintiff to Defendant the sum of \$1701.91, with interest at 6 per cent per annum, no part of which has been paid and the whole of which is still due and owing from Plaintiff to Defendant.

### III.

Defendant admits that Plaintiff made demand of Defendant for the payment of the sum of \$8,283.09 alleged in Paragraph V of the Complaint, and that it has refused and neglected to pay the same, or any part thereof, but it denies that there remains due Plaintiff from the Defendant the said sum of \$8,283.09, or any sum whatever, either with or without interest, but on the contrary Defendant alleges that there is due and owing from Plaintiff to Defendant the said sum of \$1701.91, with interest at six per cent. per annum, as alleged in Paragraph II of this Answer.

Defendant further answering said Complaint and for a counter claim to the cause of action therein set out, alleges:

That on the 11th day of June, 1910, at the special

instance and request of the plaintiff, the Defendant loaned to the Plaintiff, the Kendrick State Bank, to be repaid to Defendant in three months thereafter, with six per cent. per annum interest, the sum of \$5,000.00, to evidence which loan the Plaintiff, said Kendrick State Bank, issued to the Defendant its Certificate of Deposit for said sum of \$5,000.00; that said sum of \$5,000.00 so loaned by Defendant to Plaintiff as aforesaid, was deposited by Plaintiff with Defendant to the credit of said Plaintiff, with the understanding that the money so loaned was to remain on deposit with Defendant's Bank subject to the check of the Plaintiff, and any balance of such deposit remaining undrawn at the maturity of the loan was to be applied as a credit thereon.

Defendant further alleges that when said loan matured Plaintiff applied to the Defendant for a renewal thereof upon the same terms and conditions, and such renewal was granted by the Defendant to Plaintiff. And thereafter from time to time as said loan matured, the Plaintiff applied to Defendant for renewals thereof upon like terms and conditions as the loan was originally made by Defendant to Plaintiff; that said requests were granted by Defendant and said loan was renewed as aforesaid until on or about December 6, 1910, when the Plaintiff requested of Defendant a renewal for the period of six months, and also requested of Defendant as a matter of convenience for Plaintiff's Bank, that the Defendant accept in lieu of the Certificate of Deposit that had from time

to time been issued by Plaintiff to the Defendant to evidence said loan, the note of J. W. Bradbury, the then President of said Kendrick State Bank, the Plaintiff, who acted as the Agent and representative of Plaintiff in negotiating said loan, which request so made by Plaintiff, the Defendant acceded to and thereupon renewed and extended said loan so made by Defendant to Plaintiff for an additional period of six months and to evidence said loan Plaintiff delivered to Defendant the promissory note of J. W. Bradbury the then President of the Plaintiff.

Defendant further alleges that at Plaintiff's request said loan was again renewed and extended until December 10, 1911, when the Plaintiff applied to the Defendant for an increase of said loan from \$5,000.00 to \$10,000. upon the same terms and conditions as the original loan was made, and for a further extension of the time in which to repay the loan made by Defendant to Plaintiff.

Defendant further alleges that on said December 10, 1911, Defendant agreed to and did loan to Plaintiff at its request as aforesaid and upon the same terms and conditions as the original loan was made, the additional sum of \$5,000.00 making the amount loaned by Defendant to Plaintiff at the date last named, the sum of \$10,000.00, to evidence which loan the Plaintiff delivered to Defendant the note of said J. W. Bradbury, then President of the Plaintiff and its agent and representative, payable on demand to the order of Defendant, with six per cent. per annum interest.

Defendant further alleges that when said loan was originally made and from time to time, said Plaintiff deposited with Defendant as security for the moneys loaned by Defendant to Plaintiff various collateral, all of which collateral, however, has been heretofore returned and surrendered to the Plaintiff at its request and Defendant has no collateral or other security for the moneys due it from Plaintiff.

Defendant further alleges that on or about February 8, 1912, the Plaintiff became insolvent and pursuant to the laws of the State of Idaho, the State Bank Commissioner of the State of Idaho took control and possession of said Plaintiff, the Kendrick State Bank and its assets and proceeded to liquidate the affairs of said Bank in accordance with the banking laws of said State of Idaho; that at the time said Kendrick State Bank, the Plaintiff herein, became insolvent, and was taken possession of by the State Bank Commissioner of Idaho, and until February 15, 1912, the said Plaintiff had on deposit with the Defendant a balance of \$8,283.09 (being the same moneys which Plaintiff seeks to recover judgment in this action for) on which fund Defendant had a general banker's lien to secure the payment of the moneys due Defendant from Plaintiff, and which Defendant had a right to apply in payment of the indebtedness aforesaid, and that when Defendant learned of the insolvency of said Kendrick State Bank and that the State Bank Commissioner of Idaho had taken the control and possession thereof and was managing and conducting its affairs

and liquidating the same, the Defendant applied said money and set off said deposit with Defendant, to wit, said sum of \$8,283.09 to the payment to that extent of the aforesaid indebtedness of the Plaintiff to the Defendant, and leaving still due and owing and unpaid from Plaintiff to the Defendant on the principal of said indebtedness \$1716.91; that on February 16th, 1912, there was a payment made to Defendant on account of the indebtedness due from plaintiff to defendant of \$15.00, which was credited on the indebtedness aforesaid, leaving then due, owing and unpaid from Plaintiff the sum of \$1701.91, with interest due Defendant from Plaintiff on account of the moneys so loaned as aforesaid, to wit: 6% per annum on \$10,000.00 from December 10, 1911 to February 15, 1912; 6% per annum on \$1716.91 from February 15, 1912 to February 16, 1912, and 6% per annum on \$1701.91 from February 16, 1912, no part of which has been paid and the whole of which is still due and owing from Plaintiff to Defendant.

WHEREFORE, Defendant prays judgment against Plaintiff for the sum of \$1701.91, with interest as follows: 6% per annum on \$10,000.00 from December 10, 1911, to February 15, 1912; 6% per annum on \$1716.91 from February 15th, 1912, to February 16, 1912, and 6% per annum on \$1701.91 from February 16, 1912, and for the costs and disbursements of this action.

DOLPH, MALLORY,  
SIMON & GEARIN,  
Attorneys for Defendant.

[Endorsed]: Answer. Filed Jan. 27, 1913.

A. M. CANNON,

Clerk U. S. District Court.

And afterwards, to wit, on the 21 day of February, 1913, there was duly filed in said Court, a Reply, in words and figures as follows, to wit:

[Reply.]

*In the District Court of the United States for the  
District of Oregon.*

KENDRICK STATE BANK, a corporation,  
Plaintiff,

v.

FIRST NATIONAL BANK OF PORTLAND, a  
corporation,  
Defendant.

For its reply to the answer the plaintiff alleges and shows as follows:

I.

The plaintiff denies each and every allegation contained in paragraph II of said answer except as herein admitted, and alleges that on or about June 6, 1910, the defendant loaned to plaintiff the sum of \$5000, which sum was left on deposit with defendant subject to the checks or drafts of the plaintiff. That the plaintiff then delivered to defendant as evidence of said loan its certificate of deposit for \$5000 due in three months with interest at 6%, and at the same time delivered to defendant as collateral security for said loan certain notes and a mortgage, payable by

third parties to plaintiff. That at the maturity thereof said loan was renewed for another three months upon the same terms and collateral. That when such renewal note matured on or about December 12, 1910, J. W. Bradbury, the then president of the plaintiff, applied to the defendant to substitute his personal note and collateral in place of said certificate of deposit and collateral formerly given by the plaintiff as above stated, to which proposition the defendant assented; and thereupon the said Bradbury gave to defendant his personal note for \$5000 due in six months from December 12, 1910, and deposited with defendant as collateral security for the payment of said note thirty shares then owned by him of the capital stock of plaintiff bank, and thereupon said loan of \$5000 to plaintiff was paid and discharged, and defendant surrendered, and delivered up said certificate of deposit and the collateral notes and mortgage theretofore held by it. That upon giving his said note for \$5000 to defendant as aforesaid, said Bradbury requested defendant to credit the plaintiff with the amount thereof for its reserve deposit subject to its checks or drafts, which was done, and Bradbury then, with the knowledge and consent of the defendant, credited his personal account with plaintiff bank in said sum, as being received by plaintiff from defendant, and thereafter drew the whole of said sum from plaintiff bank for his own personal use, and the plaintiff never received any part thereof or derived any benefit therefrom, except as hereinafter stated.

That the said note of Bradbury was renewed by defendant from time to time at his request until December 10, 1911 when, at the request of said Bradbury, the defendant made a loan of an additional sum of \$5000 to Bradbury, upon his personal note, secured by an additional fifty shares of the capital stock of the plaintiff bank, which stock was owned by Bradbury, and at Bradbury's request the defendant credited the plaintiff with said additional sum of \$5000 for its reserve deposit subject to its checks or drafts, and said Bradbury then, with the knowledge and consent of the defendant, credited his personal account in plaintiff bank with said sum as being received by plaintiff from defendant, and thereafter drew the whole of said sum from plaintiff bank for his own personal use, and the plaintiff never received any part thereof or derived any benefit therefrom, except that between December 12, 1910, and February 8, 1912, it drew checks and drafts in the sum of \$1716.91 against said account, which were paid by the defendant. That on February 8, 1912, plaintiff had on deposit with defendant the balance of \$8,283.09, no part of which has been paid.

## II.

For reply to the counterclaim contained in the answer the plaintiff denies each and every allegation therein contained except as set forth in the foregoing paragraph I, and plaintiff hereby reiterates and adopts all the allegations of paragraph I herein as and for a reply to the said counterclaim.

WHEREFORE plaintiff demands judgment for

the relief demanded in the complaint.

STAPLETON & SLEIGHT,  
C. L. McDONALD,  
Ptff's. Attys.

[Endorsed]: Reply. Filed Feb. 21, 1913.

A. M. CANNON,  
Clerk U. S. District Court.

And afterwards, to wit, on the 23 day of June, 1913,  
there was duly filed in said Court, a Stipulation,  
in words and figures as follows, to wit:

**[Stipulation to Waive Jury.]**

*In the District Court of the United States for the  
District of Oregon.*

KENDRICK STATE BANK, a corporation,  
Plaintiff,  
vs.  
FIRST NATIONAL BANK OF PORTLAND, a  
corporation,  
Defendant.

It is stipulated between the parties to the above entitled action that this cause shall be tried before the court, without the intervention of a jury.

STAPLETON & SLEIGHT,  
C. L. McDONALD,  
Attorneys for Plaintiff.  
DOLPH, MALLORY, SIMON  
& GEARIN,  
Attorneys for Defendant.

[Endorsed]: Stipulation. Filed June 23, 1913.

A. M. CANNON,

Clerk U. S. District Court.

And afterwards, to wit, on the 4th day of August, 1913, there was duly filed in said Court, an Opinion, in words and figures as follows, to wit:

**[Opinion of Court.]**

*In the District Court of the United States for the  
District of Oregon.*

No. 5877

KENDRICK STATE BANK, a corporation,

Plaintiff,

v.

FIRST NATIONAL BANK OF PORTLAND, a corporation,

Defendant.

Stapleton & Sleight and C. L. McDonald for Plaintiff.

Dolph, Mallory, Simon & Gearin for Defendant.

Prior to June, 1910, the Kendrick State Bank of Idaho had been a correspondent of the defendant, the First National Bank of Portland, Oregon. J. W. Bradbury, who was the president of the former bank, was the owner of the capital stock thereof to the amount of \$23,000 out of an entire capitalization of \$25,000. In practical reality, he was the owner and manager of the bank, and transacted its business affairs very much as if no one else were interested with him. About the 11th day of June, 1910, the Kendrick

Bank, acting through J. W. Bradbury, its president, arranged by correspondence with the Portland Bank to issue to the latter its certificate of deposit for \$5,000, accompanied by certain collateral, in consideration of which the Portland Bank extended a credit to the Kendrick Bank in a like sum, the same to bear interest at six per cent per annum. This credit was extended from time to time under the same arrangement until December 6, 1910, when J. W. Bradbury, as president of the Kendrick Bank, wrote the Portland Bank as follows:

"Kendrick, Idaho, Dec. 6th, 1910.

J. W. Newkirk, Cashier,  
The First National Bank,  
Portland, Ogn.

Dear Sir:—

In reference to our C-D due Dec. 12th, for \$5000.00,

Would it be possible for us to get an extension on this for six months?

The Collections with are at a standstill and from the outlook I am of the opinion they will continue so until another crop is harvested.

We inclose our C-D for \$5000.00 for the time asked for in case you can grant us the extension asked to replace the one you hold.

We are writing you on another sheet for this to be carried in another way with our reasons for asking for the change.

Hoping you will grant us the favor of an extension

and thanking you for your many kindnesses of the past, I am,

Very truly yours,

J. W. Bradbury, Prest."

The letter referred to in the above is as follows:

"Kendrick, Idaho, Dec. 6th, 1910.

J. W. Newkirk, Cashier,

The First National Bank,

Portland, Ogn.

Dear Sir:—

I am sending herewith my personal note for \$5000.00 with Kendrick Bank Stock for like amount attached for your consideration.

We would like to have you in case you can grant us the extension asked in letter regarding our C-D for \$5000.00 due Dec. 12, 1910, to have you take this note and pass to our credit in place of the C-D-.

The reason for this is, in our statements to the State Bank Examiner which are published we now have to publish any Certificates of Deposit to other banks for borrowed money as such and in a farming community this always causes unfavorable comment and naturally hurts.

I feel sure our average Daily Balance as we have kept it for the past few months will be kept as strong and we want this extension more to keep our reserve in as good shape as possible.

Hoping if you can carry us for the extension you will accept this method of loaning us this amount, and again thanking you for your great kindness of the

past, I am,

Yours truly,

J. W. Bradbury, Prest."

On the 7th the Portland Bank, through its cashier, wrote the Kendrick Bank:

"Answering yours of the 6th instant, we will be pleased to make the extension referred to by your, and will accept the note in lieu of the Certificates of Deposit."

Certain certificates of stock in the Kendrick Bank were indorsed by Bradbury and another to the Portland Bank, as security for the extension. In pursuance of this arrangement, credit was extended to the Kendrick Bank from time to time in the amount of \$5000.00, the note of Bradbury in like amount being renewed until December 11, 1911, when, under a like arrangement, the credit to the Kendrick Bank was enlarged to \$10,000, Bradbury giving his individual note in like amount to the Portland Bank. At the same time Bradbury indorsed to the Portland Bank an additional 50 shares of stock of the Kendrick Bank as security for the loan or credit. The money in either instance, whether credit was extended the Kendrick Bank by reason of the issuance of its certificate of deposit or by reason of the execution by Bradbury of his note to the Portland Bank, was placed to the account of the Kendrick Bank by the Portland Bank, and was checked against at all times by the Kendrick Bank, and by none other.

Speaking of the enlarged credit, Mr. Newkirk, of

the Portland Bank, testifies that they were not loaning any money to Bradbury individually—"absolutely none." At this time Bradbury visited Portland, and the arrangement for the enlargement of the loan was then agreed upon. Newkirk knew nothing of Bradbury's personal responsibility, and cared nothing about it, as he supposed he was dealing with the Kendrick Bank and upon its sole credit and responsibility. He says, "I accepted that note for the Kendrick State Bank," and, in effect, that the transaction was with Bradbury as president, and for account of the Kendrick State Bank.

Bradbury corroborates Newkirk, and declares that he had no arrangement with the Portland Bank for his individual account. The interest on the note executed in his name was paid by the Kendrick Bank, and the account was carried wholly between the Portland and Kendrick Banks, the money arising from the loan having passed to the credit of the latter bank. The account was checked against and replenished from time to time as the nature of the business between the banks required.

About the first of February, 1912, the Kendrick Bank failed, and passed into the hands of the State Bank Commissioner. Prior to its failure, all the collateral except the bank stock had been returned to the Kendrick Bank, and some time after such failure the bank stock was handed over to Bradbury. The Kendrick Bank was subsequently reorganized, it having secured Bradbury's stock, which was utilized for that

purpose. In the course of the negotiations leading up to the reorganization, Bradbury was induced to transfer by check \$10,000 from his account then standing to his credit in the Kendrick Bank, which was something above that amount, and at the same time the Depositors' Committee turned over to Bradbury certain notes, being assets of the bank.

It should be stated that, when credit was negotiated for the Kendrick Bank with the Portland Bank by the use of Bradbury's note, Bradbury passed to his credit in the Kendrick Bank a like amount, charging the Portland Bank with the same amount, which would be the usual and regular method of keeping book account of the transaction.

The Portland Bank was not a party to the negotiations of Bradbury with the committee, nor did it have knowledge concerning them.

Bradbury further testifies that he instructed the Portland Bank to at any time it saw fit charge the account of the Kendrick Bank with the note. When the Kendrick Bank failed, there was a balance standing to its credit on account with the Portland Bank of \$8283.09. The Portland Bank thereupon took credit for this balance, and charged it against the Bradbury note. Now the Kendrick Bank has sued the Portland Bank for this balance as for moneys deposited with it subject to check or draft.

The Portland Bank answers, setting up the facts leading up to and touching the transaction in detail, and alleges as the ultimate fact that the Portland

Bank loaned to the Kendrick Bank the sum of \$10,000, and as evidence of such loan the latter bank delivered to defendant the note of J. W. Bradbury for the amount, Bradbury being then the president of said bank and acting for it and in its behalf, as its representative and agent. The Portland Bank also sets up a counter-claim for the difference between the amount sued for and the amount of such note, less \$15 paid subsequent to the failure of the Kendrick Bank, being for the sum of \$1701.91, with interest at six per cent per annum from the time such balance was charged against the note by the Portland Bank.

WOLVERTON, District Judge:

It is admitted on the part of plaintiff's counsel that, if the loan made by the Portland Bank was to the Kendrick Bank and not to Bradbury individually, and can be so treated in legal contemplation, then the Portland Bank was legally authorized to charge off the balance standing to the credit of the Kendrick Bank against the Bradbury note, and thus protect itself against loss on account of the failure of the Kendrick Bank to that extent.

The vital question depends upon whether, in an action at law, the defendant will be permitted to show that the debt incurred by the execution of the Bradbury note is the debt of the Kendrick Bank, as it was really intended to be by the plain agreement and understanding of the parties.

It is the doctrine in Oregon that, as it relates to simple contracts, the presumption that a contract

made in the name of the agent of a known principal is the contract of the agent and not of the principal is a disputable one, and that it may be shown by parole that the principal is bound also, but that in no event may the agent be so discharged. *Barbre v. Goodale*, 28 Or. 465. But it was said in that case:

"This doctrine must be limited to simple contracts, and may not be extended to negotiable instruments and specialties under seal, as they constitute an exception to the rule."

In the present case, however, the defendant, in purpose and effect, is not suing on the note, but to recover on the contract of the parties, of which the note is only an incident. It is a contract of which the principal has received, as it was so intended, the sole and entire benefit. The money obtained through the arrangement went at once to the credit of the Kendrick Bank, and was so held by its correspondent, against which the Kendrick Bank drew checks and drafts as occasion required, and constituted its source of credit with the Portland Bank. Indeed, the contract was entered into by the bank through its recognized officer, and the case does not stand upon the footing of a mere agent contracting in the name of his principal. Individually, Bradbury received not the slightest benefit from the arrangement, and, while he probably would not be allowed to escape being bound by his obligation, yet I am constrained to the view that the bank also, in an action directly between the parties to the contract, cannot escape liability. See *Appel* of

Third National Bank of Philadelphia et al., 12 L. R. A. 223. It would work a glaring injustice here to adopt the opposite view. This is readily apparent from the simple facts of the case.

If it be said that the Kendrick Bank, or its president in its behalf, adopted this method of obtaining credit with the Portland Bank with a view to suppressing a full statement of its liabilities to the Bank Commissioner, it may be conclusively answered that the Kendrick Bank will not be permitted to take advantage of its own wrong and thereby perpetrate an injustice upon the Portland Bank.

Another question presented is whether the president of the bank was authorized to enter into such a contract in behalf of the corporation, but the bank having received the sole and entire benefit of the transaction, it has ratified the acts of its chief officer, even conceding that he acted beyond the scope of his authority, a question we are not now called upon to determine. *Aldrich v. Chemical National Bank*, 176 U. S. 618.

In view of these considerations, the defendant is not only entitled to its set-off as claimed, but to recover the balance due from the plaintiff upon the account between the banks.

[Endorsed]: Opinion. Filed Aug. 4, 1913.

A. M. CANNON,  
Clerk U. S. District Court.

And afterwards, to wit, on Monday, the 4th day of August, 1913, the same being the 25th Judicial

day of the Regular July Term of said Court; Present: the Honorable Chas. E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

[**Judgment.**]

*In the District Court of the United States for the  
District of Oregon.*

No. 5877

KENDRICK STATE BANK

v.

FIRST NATIONAL BANK OF PORTLAND.

This cause having heretofore, on the 24th day of June, 1913, been submitted to the Court without the intervention of a jury, and taken under advisement, came on regularly at this time for the verdict and decision of the Court.

Whereupon the Court having been fully advised in the premises finds for the defendant and against the plaintiff in the sum of \$1851.58:

Now, therefore, based thereon, it is Ordered and adjudged that the said defendant First National Bank of Portland, Oregon, a corporation have and recover of and from the said plaintiff Kendrick State Bank, a corporation, the sum of \$1851.58, together with its costs and disbursements herein taxed at \$78.95.

And afterwards, to wit, on the 27th day of June, 1913, there was duly filed in said Court, a Stipulation and Exhibit, in words and figures as follows, to wit:

## [Stipulation and Plaintiff's Exhibit 9.]

*In the District Court of the United States for the  
District of Oregon.*

KENDRICK STATE BANK, a corporation,  
Plaintiff,

v.

FIRST NATIONAL BANK OF PORTLAND, a  
corporation,  
Defendant.

IT IS HEREBY STIPULATED between the parties to the above entitled action, by their respective counsel, that the annexed seventeen sheets contain a true and correct copy and transcript from the minutes of meetings of the board of directors of the Kendrick State Bank held on and between July 6, 1909, to and including Jan. 17, 1912, as contained in the original minutes of the meetings of said board of directors introduced in evidence by the plaintiff in the above entitled action, said book being marked plaintiff's exhibit 9.

IT IS FURTHER STIPULATED that the copies of said minutes hereto annexed be filed in this cause in place of said original minute book and that the same shall have the same force and effect as evidence in this case as said original minute book would have had, subject to all the objections thereto made by counsel herein, and it is stipulated that the said original minute book may be withdrawn from the files and returned to plaintiff.

Dated June 26, 1913.

STAPLETON & SLEIGHT,  
Counsel for Plaintiff.  
DOLPH, MALLORY,  
SIMON & GEARIN,  
Counsel for Defendant.

[Plffs. Ex. 9.]

July 6, 09.

At a regular meeting of the Board of Directors of the Kendrick State Bank, Kendrick, Idaho, held on the 6th day of July, 1909 A. D. the following resolutions were unanimously adopted:

Resolved that the President J. W. Bradbury and cashier E. D. Bradbury of this bank, and each of them be and they are hereby jointly and severally authorized and empowered to borrow on behalf of this bank from the Commercial National Bank of Chicago from time to time such sums of money as said officers or either of them may deem expedient, not exceeding in the aggregate at any one time the principal sum of ten thousand & no-100 dollars (\$10000.00) on such terms and conditions as such officer or officers acting hereunder may, in his or their absolute discretion, deem best, and from time to time to renew any and all or any part of such loans so made, as the same mature, or otherwise, until all such loans are paid in full, with interest: and to pledge for the payment of any such loan or loans, or renewal thereof, or any indebtedness, obligation or liability of this bank, such securities, assets or property of this bank as such officer or offi-

cers may deem necessary or proper, and to give the obligation or obligations of this bank in evidence of such loan or loans in such form with such conditions, terms, stipulations, waivers and bills of sale, of securities or assets or property as such officer or officers shall deem proper; that each of such officers of this bank be, and he is hereby also authorized to borrow money from the Commercial National Bank of Chicago, by rediscounting with said Commercial National Bank of Chicago any of the bills receivable, at any time held by this bank not exceeding in the aggregate at any one time the sum of ten thousand and no-100 dollars (\$10000.00) in addition to the sum above authorized to be borrowed upon the direct obligations of this bank, on such terms and conditions as such officer or either of them may deem for the best interest of this bank, and that the Commercial National Bank of Chicago may at any time apply any property or money in, or which may come to its hands belonging to this bank to the payment of any obligations, indebtedness or liabilities from this bank to it, whether due or not.

This is to certify that the above and foregoing is a true copy of a resolution duly passed and adopted by the directors of the Kendrick State Bank at a meeting of such directors duly called, convened and held according to law, and the by laws of said bank on the 6th day of July A. D. 1909.

J. W. Bradbury, president    E. D. Bradbury, secretary  
Corporate seal of bank attached.

The authority conferred by the attached form of resolution should be conferred upon officers of the bank other than those who sign the certificate, and should have the seal of the bank attached.

No other business on board meeting adjourned.

Correct attest:

E. D. Bradbury  
R. M. Walker

Present:

R. M. Walker,  
E. D. Bradbury  
J. W. Bradbury  
A. Bradbury

Kendrick Idaho, Wednesday June 15, 1910.

The regular meeting of the board of directors of The Kendrick State Bank to be held in its office on this Wednesday June 15, 1910.

No quorum being present meeting adjourned.

E. D. Bradbury cashier      J. W. Bradbury President

Kendrick Idaho Saturday July 16, 1910.

At a meeting of the board of directors of The Kendrick State Bank held in its office at Kendrick Idaho on this Saturday July 16, 1910 the following resolution was adopted:

Resolved that the president J. W. Bradbury and cashier E. D. Bradbury of this bank and each of them be and they are hereby jointly and severally authorized and empowered to borrow on behalf of this bank from the Commercial National Bank of Chicago from time to time such sums of money as said officers or either of them may deem expedient, not exceeding in the aggregate at any one time the principal sum of ten thousand & no-100 dollars (\$10000.00) on such

terms and conditions as such officer or officers acting hereunder may, in his or their absolute discretion deem best, and from time to time to renew any and all or any part of such loans so made, as the same mature, or otherwise, until all such loans are paid in full, with interest: and to pledge for the payment of any such loan or loans, or renewal thereof, or any indebtedness, obligation or liability of this bank, such securities, assets or property of this bank as such officer or officers may deem necessary or proper, and to give the obligation or obligations of this bank in evidence of such loan or loans in such form with such conditions, terms, stipulations, waivers and bills of sale, of securities or assets or property as such officer or officers shall deem proper; that each of such officers of this bank be, and he is hereby also authorized to borrow money from the Commercial National Bank of Chicago, by rediscounting with said Commercial National Bank of Chicago, any of the bills receivable, at any time held by this bank, not exceeding in the aggregate at any one time the sum of ten thousand & No-100 dollars (\$10000.00) in addition to the sum above authorized to be borrowed upon the direct obligations of this bank, on such terms and conditions as such officer or either of them may deem for the best interest of this bank, and that the Commercial National Bank of Chicago may at any time apply any property or money in, or which may come to its hands belonging to this bank to the payment of any obligations, indebtedness or liabilities from this bank to it,

whether due or not.

This is to certify that the above and foregoing is a true copy of a resolution duly passed and adopted by the directors of the Kendrick State Bank at a meeting of such directors duly called and convened and held according to law, and the by laws of said bank on the 16th day of July, 1910.

J. W. Bradbury, president    E. D. Bradbury, secretary  
corporate seal not attached.

The authority conferred by the attached form of resolution should be conferred upon officers of the bank other than those who sign the certificate, and should have the seal of the bank attached.

No further business meeting adjourned.

Present: J. W. Bradbury, A. Bradbury, E. D. Bradbury.

J. W. Bradbury, president    E. D. Bradbury cashier.

Kendrick Idaho, Monday August 1, 1910.

At a special meeting of the board of directors of The Kendrick State Bank held in its office on this Monday August 1, 1910.

O. E. Miller was appointed as director to fill vacancy of R. M. Walker.

Present at meeting J. W. Bradbury, A. Bradbury, E. D. Bradbury and O. E. Miller.

Letter from M. G. Cruse bank commissioner calling attention to condition of bank read and answer approved.

The following notes were ordered charged to undivided profits same being a total loss.

No. 2205 J. E. Kennedy bal, 150.20.

2206 J. C. H. Reynolds, bal. 25.

2934 J. G. Holman, bal. 6.25.

2931 J. G. Holman, bal 20.

No further business meeting adjourned.

J. W. Bradbury president    E. D. Bradbury cashier.  
Kendrick Idaho, Wednesday November 16, 1910.

The regular meeting of the board of directors of Kendrick State Bank held in its office on this Wednesday November 16, 1910. The following directors were present: J. W. Bradbury, president, A. Bradbury vice prest, E. D. Bradbury cashier.

No business of importance meeting adjourned to next regular meeting.

J. W. Bradbury president    E. D. Bradbury cashier  
Kendrick Idaho Wednesday Jany. 11-11.

The regular meeting of the board of directors held in the office of the Kendrick State Bank at Kendrick Idaho on this Wednesday January 11-1911. The following directors were present, J. W. Bradbury A. Bradbury E. D. Bradbury.

No business of importance meeting adjourned to next regular meeting date.

J. W. Bradbury president    E. D. Bradbury cashier  
Kendrick Idaho Wednesday Febry 15-1911.

The regular meeting of the board of directors of The Kendrick State Bank to be held in its office on this Wednesday February 15, 1911.

No quorum beinb present adjourned.

J. W. Bradbury president.

Kendrick Idaho Wednesday Mch 15-1911

The regular meeting of the board of directors of The Kendrick State Bank to be held in its office on this Wednesday Mch 15, 1911.

No quorum being present adjourned.

J. W. Bradbury president.

Kendrick Idaho May 2, 1911.

The regular annual meeting of the stockholders of The Kendrick State as held in its office on this Tuesday May 2, 1911.

Stockholders present	Shares	Total
A. Bradbury	5	
E. D. Bradbury	5	
L. P. Bradbury	5	
H. E. Abend	5	
J. M. Bradbury	230	250

The following names were put in nomination for director of The Kendrick State Bank for the ensuing year and were unanimously elected: A. Bradbury, E. D. Bradbury, L. P. Bradbury, J. E. Abend, J. W. Bradbury.

No further business meeting adjourned.

E. D. Bradbury cashier.

(Also signed by)

A. Bradbury

E. D. Bradbury

L. P. Bradbury

Hallet E. Abend

J. W. Bradbury

Kendrick Idaho Tuesday May 2, 1911.

The meeting of the board of directors of the Kendrick State Bank held in its office on this 2 day of May 1911. The following nomination for officers for the ensuing year was made:

For President, J. W. Bradbury

For vice president, E. D. Bradbury

For cashier, E. D. Bradbury

The above named officers were elected by unanimous vote to the respective position for the ensuing year.

Directors present J. W. Bradbury, E. D. Bradbury, A. Bradbury, T. P. Bradbury, H. E. Abend.

No other business meeting adjourned.

E. D. Bradbury cashier

(Also signed by)

J. W. Bradbury

E. D. Bradbury

A. Bradbury

L. P. Bradbury

Hallet E. Abend

Kendrick Idaho Tuesday May 16-1911.

At a meeting of The Board of Directors of The Kendrick State Bank held in its office on this 16- day of May 1911 the following resolution relative to the disposal of land to Jerome J. Day were passed and the president J. W. Bradbury and the cashier E. D. Bradbury authorized to transfer same.

Present J. W. Bradbury, A. Bradbury, E. D. Bradbury, T. P. Bradbury, H. E. Abend.

No further business meeting adjourned.

J. W. Bradbury president E. D. Bradbury cashier  
(Also signed by)

A. Bradbury director

Kendrick, Idaho, Wednesday July 19-1911.

At a regular meeting of the Board of directors of Kendrick State Bank held in its office this Wednesday July 19-1911 the following directors were present

J. W. Bradbury, E. D. Bradbury, L. P. Bradbury.

No special business, meeting adjourned.

Attest

J. W. Bradbury director      E. D. Bradbury cashier  
(Also signed by)

### Director

A. Bradbury

L. P. Bradbury.

Kendrick Idaho Wednesday Sept 20, 1911.

At a meeting of the board of directors of The Kendrick State Bank held at its office on this Wednesday Sept 30, 1911 the following directors were present

J. W. Bradbury, E. D. Bradbury, L. P. Bradbury.

No special business meeting adjourned.

J. W. Bradbury president      E. D. Bradbury cashier  
(Also signed by)

A. Bradbury

L. P. Bradbury

Kendrick Idaho Wednesday Nov 22-1911

At a meeting of the board of directors of the Kendrick State Bank held in its office this Wednesday

November 22-1911 the following directors were present

J. W. Bradbury, A. Bradbury, E. D. Bradbury, L. P. Bradbury.

No special business meeting adjourned.

J. W. Bradbury pres

E. D. Bradbury cashier

(Also signed by)

A. Bradbury director

L. P. Bradbury director.

Kendrick Idaho Tuesday Jany 16-1912

The regular annual meeting of the stockholders of The Kendrick State Bank having been changed by order of state bank commissioner to the third Tuesday in January of each year The stockholders of The Kendrick State Bank of Kendrick Latah County State of Idaho held their annual meeting in the office on this day the following stock represented

J. W. Bradbury	230 shares
A. Bradbury	5
E. D. Bradbury	5
L. P. Bradbury	5
No shares represented	245
H. E. Abend not represented	5
Total capital stock shares	250

The following directors were elected for the year 1912

J. W. Bradbury, E. D. Bradbury, A. Bradbury, L. P. Bradbury, H. E. Abend.

No further business meeting adjourned until reg-

ular annual meeting of call by proper officers.

Signed

J. W. Bradbury

E. D. Bradbury

A. Bradbury

L. P. Bradbury cashier

Kendrick Idaho Wednesday Jany 17-1912

At a regular meeting of the directors of The Kendrick State Bank held in the office in Kendrick Latah County State of Idaho on this Wednesday Jany 17-1912 the following directors were present

J. W. Bradbury, A. Bradbury, E. D. Bradbury, L. P. Bradbury.

### Election of officers.

The following officers were elected for their respective positions for the ensuing year

For president, J. W. Bradbury

For vice prest A. Bradbury

For cashier

### In the matter of charging off bad loan

the president

" Geo. Clem 2500.00

" Geo. Clem 2500.00

making a total charged off  
was approved. 5500.00

In the matter of bonding of J. W. Bradbury as president and actual manager of the Kendrick State Bank the personal bond of J. W. Bradbury with A. Bradbury and E. D. Bradbury as sureties for \$5000.00 was accepted and approved.

In the matter of bills receivable some were approved up to and including all loans made to Tuesday January 16-1912.

In the matter of loans made to directors the following were approved:

H. E. Abend, dated Dec. 26-1911 due Dec 26-1916 for \$5000.00.

A. Bradbury dated Dec. 20-1911 due Dec 20-1916 for \$5000.00.

L. P. Bradbury dated Dec. 20-1911 due Dec. 20-1916 for \$5000.00.

J. W. Bradbury dated Jan. 2-1911 on or before 5 years for \$5000.00.

No further business meeting adjourned until next regular meeting. ..... cashier

Correct attest

J. W. Bradbury

Directors as present

(Signed)

A. Bradbury

E. D. Bradbury

director as present

L. P. Bradbury

Director as present

KNOW ALL MEN BY THESE PRESENTS:  
That J. W. Bradbury as principal and A. Bradbury and E. D. Bradbury as sureties are held and are firmly bound unto the Kendrick State Bank a corporation in and of Kendrick Latah County State of Idaho in the

sum of five thousand and No-100 Dollars for the payment of which, well and truly to be made, the said J. W. Bradbury as principal and A. Bradbury and E. D. Bradbury as sureties bind themselves their heirs and administrators Jointly severally and Firmly by these present.

Sealed with out seals and dated this 17th day of January, 1912.

The Conditions of this obligation is such that if the said J. W. Bradbury shall well and truly administer the affairs of the Kendrick State Bank as executive officer thereof and shall make a full and true accounting of all matters related thereto and fully account for all transactions appertaining to the said J. W. Bradbury as president then and in that event this obligation is to be void, otherwise to remain in full force and effect.

J. W. Bradbury principal  
A. Bradbury surety  
E. D. Bradbury surety

[Endorsed]: Plaintiff's Exhibit 9 and Stipulation.  
Filed Jun. 27, 1913.

A. M. CANNON,  
Clerk U. S. District Court.

And afterwards, to wit, on the 10th day of September 1913 there was duly filed in said Court, a Bill of Exceptions, in words and figures as follows, to wit:

## [Bill of Exceptions.]

*In the District Court of the United States for the  
District of Oregon.*

KENDRICK STATE BANK, a corporation,  
Plaintiff,

v.

FIRST NATIONAL BANK OF PORTLAND, a  
corporation,  
Defendant.

This cause came on for trial before the Hon. Chas. E. Wolverton, Judge, without a jury, a jury trial having been expressly waived by stipulation in writing signed and duly filed, and the parties being represented by Stapleton & Sleight and C. L. McDonald, attorneys for plaintiff, and Dolph, Mallory, Simon & Gearin, attorneys for defendant, the following proceedings were had.

The plaintiff to maintain the issues on its part, called EMMETT E. EASTWOOD, a witness on behalf of plaintiff, who testified as follows:

## Direct Examination.

I live in Lewiston, Idaho, and in the fall of 1912 I was deputy state bank commissioners of the State of Idaho, and took possession and had charge of the Kendrick State Bank from the ninth of February, 1912 until we turned it over to the new organization on April 9, 1912.

Paper marked plaintiff's Exhibit 1, consisting of a statement signed by the First National Bank of Port-

land to the Idaho Bank Commissioners offered and received in evidence. It is admitted this is the original statement rendered by defendant to plaintiff.

Plaintiff's Exhibit 1.

Kendrick State Bank, Kendrick, Id. in account with  
The First National Bank of Portland, Oregon.

Dr.		Cr.	Cr.
Jan. 31	No. R 29	\$727.45	Jan. 29, 1912
Feb. 1,	R 30,	137.03	Feb. 1      137.03      balance,      9877.46
6	R 3	1092.70	6    1092.70    Feb. 6    3      381.58
7	R 31	3.77	7    11.27      8    5      68.33
	P 3	7.50	8    75.83
8	R 5	60.83	Balance      8283.09
<hr/>		<hr/>	
R 6	15	10327.37	10327.37
<hr/>		<hr/>	
		Feb. 8 Bal	8283.09
		5877	

(Stamped) Filed June 24, 1913, A. M. Cannon,  
Clk U. S. Dist. Ct.

By the COURT: This shows \$8000 on deposit with the First National Bank of Moneys belonging to the Kendrick State Bank?

Plaintiff's COUNSEL: Yes a credit balance due.

By the COURT: Very well.

The foregoing statement was sent by defendant to plaintiff in answer to a telegraphic message from the State Bank Commissioners to the defendant dated Feb. 8, 1912.

It is admitted by defendant that prior to the commencement of this action the plaintiff made a demand upon the defendant for the payment of said sum of

\$8000. and that payment thereof was refused.

Plaintiff rested.

To maintain the issues upon its part the defendant called J. W. NEWKIRK who testified on behalf of the defendant as follows:

Direct Examination.

I am and for seven years have been cashier of the defendant bank and am acquainted in a business way with the plaintiff bank and with its officers. I know Mr. Bradbury one of the officers, the president. I have met him personally. The plaintiff bank was for several years past the correspondent of defendant bank. I remember the circumstances of the first loan of \$5000 made by defendant to plaintiff in June, 1910. We loaned that amount to the plaintiff at that time.

I know Mr. A. L. Mills as the president of defendant bank.

It is admitted by the plaintiff that the signature of J. W. Bradbury and of the other signors to the following letters and exhibits offered in evidence is genuine, and that said letters were written and mailed and received in due course at or about the times on which they bear date.

I identify the letter marked "Defendant's Exhibit A" which was received by defendant from J. W. Bradbury, the president of the plaintiff bank about the time of its date.

Letter dated June 11, 1910 marked "Defendant's Exhibit A" offered in evidence as follows:

## Defendant's Exhibit A.

Kendrick State Bank, Kendrick, Idaho.

Kendrick, Idaho, June 11, 1910.

A. L. Mills, President

The First National Bank, Portland, Oregon.

Dear Sir:

Our cashier, Mr. E. D. Bradbury informs me he made arrangements with you to carry us for \$5000.00 on our C-D to be accompanied with collateral.

Enclosed find our C-D—No. 2751—for three months for \$5000 together with collateral amounting to \$10,230.00.

I did not put in rate as I was not sure what it would be. Kindly credit our account with this.

Thanking you for your kindness in this as well as for your many favors of the past, I am,

Yours truly,

J. W. Bradbury, Prest.

Collateral enclosed.

Fred N. Hallett,	\$1880.
Maude A. A. Horner	600.
Ind-Farmers Grain	5000
Lincoln Hdw.	2000
Ralph Roberts,	750.

---

10,230.00

Letter dated June 13, 1910, written by A. L. Mills, president of defendant and sent to plaintiff and offered in evidence as follows:

## Defendant's Exhibit B.

June 13, 1910.

Kendrick State Bank,

Kendrick, Idaho.

Gentlemen:

Yours of the 11th instant at hand and we have this day credited your account \$5000. by your certificate of deposit. We do not care to insert any rate, but at the same time, beg to advise you that it will be six per cent per annum. Herewith returned please find collateral, which we would ask you to endorse and return to us.

Yours very truly, A. L. Mills, President.

By the COURT: Did the collateral mentioned in that letter come through without being properly endorsed?

By Defendant's COUNSEL: Yes and then was sent back for re-endorsement and return.

The following letter was received by defendant bank from J. W. Bradbury, president of plaintiff bank shortly after the date it bears.

Letter dated June 16, 1910 marked "Defendant's Exhibit C" offered by defendant as follows:

## Defendant's Exhibit C.

Kendrick State Bank, Kendrick Idaho.

Kendrick, Idaho, June 16, 1910.

A. L. Mills Prest. First National Bank,

Portland, Ogn.

Dear Sir:

As requested by yours of the 13th we endorse and

return to you the following collateral notes:

Fred N. Hallett	\$1880
Maude A. Horne	600
Ind. Farmers Grain	5000
Lincoln Hda. Co.	2000
Ralph Roberts,	750. \$10230.

---

Thanking you again for your many kindnesses, I am,

Yours truly,

J. W. Bradbury, Prest.

Letter dated Sept. 6, 1910 marked "Defendant's exhibit D" offered by defendant as follows:

Defendant's Exhibit D.

Kendrick State Bank, Kendrick Idaho.

Kendrick, Idaho, Sept. 6, 1910.

First National Bank,

Portland, Oregon.

Gentlemen:

Will you kindly advise us if it will be satisfactory to you to extend the time on our note of \$5000 for another 30 days. If so please charge our account Sept. 12th for amount of interest due you.

Very truly,

E. D. Bradbury, cashier."

Letter dated Dec. 6, 1910, marked "Defendant's Exhibit E" offered by defendant as follows:

Defendant's Exhibit E.

Kendrick State Bank, Kendrick, Idaho, Dec. 6, 1910.

J. W. Newkirk, Cashier,

First National Bank, Portland, Oregon.

Dear Sir: In reference to our C-D- due Dec. 12th for \$5000.00.

Would it be possible for us to get an extension on this for six months?

The collections with (us) are at a standstill and from the outlook I am of the opinion they will continue so until another crop is harvested.

We enclose our C-D- for \$5000 for the time asked for in case you can grant us the extension asked to replace the one you hold.

We are writing you on another sheet for this to be carried in another way with our reasons for asking for the change.

Hoping you will grant us the favor of an extension and thanking you for your many kindnesses of the past, I am,

Very truly yours, J. W. Bradbury, Prest.

Letter dated Dec. 6, 1910 marked "Defendant's Exhibit F" offered in evidence by defendant.

Plaintiff's COUNSEL: Plaintiff objects to the introduction of the defendant's Exhibit F in evidence upon the ground that it is incompetent, irrelevant and immaterial and does not tend to prove any of the allegations contained in the defendant's answer and is inadmissible under the pleadings.

Objection overruled and plaintiff duly excepted.

## Defendant's Exhibit F.

Kendrick State Bank, Kendrick Idaho.

Kendrick, Idaho, Dec. 6, 1910.

J. W. Newkirk, Cashier,

First National Bank, Portland, Oregon.

Dear Sir:

I am sending herewith my personal note for \$5000. with Kendrick Bank Stock for like amount attached for your consideration.

We would like to have you in case you can grant us the extension asked in letter regarding our C-D- for \$5000 due Dec. 12, 1910, to have you take this note and pass to our credit in place of the C-D-.

The reason for this is, in our statements to the state Bank Commissioner which are published we now have to publish any Certificates of Deposit to other banks for borrowed money as such and in a farming community this always causes unfavorable comment and naturally hurts.

I feel sure our average Daily Balance as we have kept it for the past few months will be kept as strong and we want this extension more to keep our reserve in as good shape as possible.

Hoping if you can carry us for the extension you will accept this method of loaning us this amount, and again thanking you for your great kindness of the past, I am,

Yours truly, J. W. Bradbury, Prest.

Letter marked Defendant's Exhibit F, dated Dec. 7, 1910 offered in evidence by defendant.

Plaintiff's COUNSEL: Plaintiff objects to the introduction of said letter upon the grounds specified to the introduction of Defendant's Exhibit E.

Objection overruled and plaintiff duly excepted.

Defendant's Exhibit G.

December 7, 1910.

Kendrick State Bank,  
Kendrick, Idaho.

Gentlemen:

Answering yours of the 6th instant, we will be pleased to make the extension referred to by you, and will accept the note in lieu of the Certificates of Deposit. We enclose herein for endorsement two certificates aggregating thirty shares of stock which you may return to us after procuring the required endorsement.

Yours very truly, J. W. Newkirk, Cashier.

Letter dated Dec. 13, 1910, marked Defendant's Exhibit H, offered in evidence by defendant.

Plaintiff's COUNSEL: Plaintiff objects to the introduction of said letter upon the grounds specified to the introduction of Defendant's Exhibit F. Objection overruled and plaintiff duly excepted.

Defendant's Exhibit H.

Kendrick State Bank, Kendrick, Idaho.

Kendrick, Idaho, Dec. 13, 1910.

J. W. Newkirk Cashier,

The First National Bank, Portland, Oregon.

Dear Sir:

As requested in your letter of the 7th, enclosed find, Certificate of stock No. 36 five shares G. W. Sup-piger, Certificate of stock No. 40 thirty five shares J. W. Bradbury.

Pardon the delay but we could not get hold of the party to sign any sooner.

Thanking you again for your kindness in the matter I am,

Very truly yours, J. W. Bradbury, prest.

Letter dated June 6, 1911, marked Defendant's Exhibit I, offered in evidence by Defendant.

Plaintiff's COUNSEL; Plaintiff objects to the introduction of said letter upon the grounds specified to the introduction of Defendant's Exhibit F. Objection overruled and plaintiff duly excepted.

Defendant's Exhibit I.

Kendrick State Bank, Kendrick, Idaho.

Kendrick, Idaho, June 6, 1911.

The First National Bank,

Portland, Oregon.

Gentlemen:

In reply to your notice of note for \$5000 due June 12th would ask if possible to have this renewed for another three months which will carry it until our fall crops begin to move.

If you can grant this extension kindly send renewal note for my signature.

Thanking you again for your many kind favors in

the past and hoping you may grant this further favor,  
I am,

Very truly yours,

J. W. Bradbury.

Letter dated June 7, 1911, marked Defendant's Exhibit J offered in evidence by defendant.

Plaintiff's COUNSEL: Plaintiff objects to the introduction of said letter upon the grounds specified to the introduction of Defendant's Exhibit F. Objection overruled and plaintiff duly excepted.

Defendant's Exhibit J.

June 7, 1911.

J. W. Bradbury Esq.,  
Kendrick, Idaho.

Dear Sir:

Replying to yours of the 6th instant, I have to say that it will be agreeable to renew your note for ninety days and I am enclosing a new note which you may sign and return to us; at the same time please authorize us to charge your account with the interest on the old note.

Yours very truly, J. W. Newkirk, Cashier.

Letter on letterhead of Kendrick St. Bk. dated June 10, 1911, marked Defendant's Exhibit K, offered in evidence by defendant.

Plaintiff's COUNSEL: Plaintiff objects to the introduction of said letter upon the grounds specified to the introduction of Defendant's Exhibit F. Objection overruled and plaintiff duly excepted.

## Defendant's Exhibit K.

Kendrick, Idaho, June 10, 1911.

J. W. Newkirk, Cashier,

The First National Bank, Portland, Oregon.

Dear Sir:

As requested by your letter of the 7th, enclosed find note signed by J. W. Bradbury for \$5000.00 dated June 12, due ninety days in favor your good bank.

Thanking you again for your great kindness, I am,

Yours truly, J. W. Bradbury.

By the COURT: That is not signed as president?

Defendant's COUNSEL: No, it is just signed J. W. Bradbury, but it is on the letter head of the Kendrick State Bank. It is an official letter, apparently. And then he says 'Kindly charge our account with interest on old note and return to us.' Showing it is Kendrick State Bank matter.

Letter dated Sept. 22, 1911, marked Defendant's Exhibit L, offered in evidence by defendant.

Plaintiff's COUNSEL: Plaintiff objects to the introduction of said letter upon the grounds specified to the introduction of Defendant's Exhibit F. Objection overruled and plaintiff duly excepted.

## Defendant's Exhibit L.

Kendrick State Bank, Kendrick Idaho.

Kendrick, Idaho, Sept. 22, 1911.

J. W. Newkirk Cashier,

The First National Bank, Portland, Oregon.

Dear Sir:

In reply to your notice of my note past due attached, would ask if possible for you to carry this for a short time longer. Our grain is all harvested and a large portion of it is in the warehouse but there has been very little sold as yet.

Thanking you again for your kindness in this matter and trusting you may be able to extend for a short time, I am,

Yours truly, J. W. Bradbury.

Letter dated Sept. 25, 1911, marked Defendant's Exhibit M, offered in evidence by defendant.

Plaintiff's COUNSEL: Plaintiff objects to the introduction of said letter upon the grounds specified to the introduction of Defendant's Exhibit F. Objection overruled and plaintiff duly excepted.

Defendant's Exhibit M.

September 25, 1911.

J. W. Bradbury Esq.,  
Kendrick, Idaho.

Dear Sir:

Answering yours of the 22d inst. I will say that it will be necessary for you to pay the interest for ninety days up to September 10th, when we will grant you an extension of thirty to sixty days, as you may desire.

Yours very truly,

J. W. Newkirk Cashier.

Letter dated Sept. 28, 1911, marked Defendant's Exhibit N, offered in evidence by defendant.

Plaintiff's COUNSEL: Plaintiff objects to the introduction of said letter upon the grounds specified to the introduction of Defendant's Exhibit F. Objection overruled and plaintiff duly excepted.

## Defendant's Exhibit N.

Kendrick State Bank, Kendrick, Idaho.

Kendrick, Idaho Sept. 28, 1911.

J. W. Newkirk Cashier,

The First National Bank, Portland, Oregon.

Dear Sir: In reply to your letter of the 25th would ask you to please charge our account with interest on note of J. W. Bradbury to Sept. 10, 1911 for \$5000.

Thanking you again for the kindnes, I am,

Yours truly, J. W. Bradbury, Prest.

Letter on Kendrick St. Bk. letterhead dated Dec. 16, 1911, marked Defendant's Exhibit O, offered in evidence by defendant.

Plaintiff's COUNSEL: Plaintiff objects to the introduction of said letter upon the grounds specified to the introduction of Defendant's Exhibit F. Objection overruled and plaintiff duly excepted.

## Defendant's Exhibit O.

Kendrick Idaho, Dec. 16, 1911.

J. W. Newkirk, Cashier,

The First National Bank, Portland, Oregon.

Dear Sir: Enclosed find Certificate of stock No. 49 Kendrick State Bank, 50 shares as added collateral as agreed.

Thanking you again for your kindness, I am,  
Very truly yours, J. W. Bradbury.

Letter dated Dec. 18, 1911, marked Defendant's Exhibit P, offered in evidence by defendant.

Plaintiff's COUNSEL: Plaintiff objects to the introduction of said letter upon the grounds specified to the introduction of Defendant's Exhibit F. Objection overruled and plaintiff duly excepted.

Defendant's Exhibit P.

Dec. 18, 1911.

Mr. J. W. Bradbury,

Kendrick State Bank, Kendrick, Idaho.

Dear Sir: We beg to return herein for your endorsement certificate number 49 for fifty shares of the stock of your bank.

Yours very truly,

J. W. Newkirk Cashier.

Letter dater Dec. 21, 1911, marked Defendant's Exhibit Q, offered in evidence by defendant.

Plaintiff's COUNSEL: Plaintiff objects to the introduction of said letter upon the grounds specified to the introduction of Defendant's Exhibit F. Objection overruled and plaintiff duly excepted.

Defendant's Exhibit Q.

Kendrick State Bank, Kendrick, Id.  
Kendrick, Idaho, Dec. 21, 1911.

J. W. Newkirk, Cashier,

The First National Bank, Portland, Oregon.

Dear Sir:

Enclosed find certificate of stock endorsed as requested in your letter of the 18th. I am sorry I overlooked this, and again thanking you for the kindness I am,

Very truly yours,

J. W. Bradbury.

WITNESS: I remember an interview between myself and Mr. J. W. Bradbury, president of the Kendrick State Bank, during the early part of December, 1911, when this loan was increased from \$5000 to \$10,000. It took place at the First National Bank and Mr. Bradbury and myself were present.

Q. What did Mr. Bradbury require of you?

A. At what date was that, may I ask?

Q. When the \$10,000 loan was made to the Kendrick State Bank.

Plaintiff's COUNSEL: We object to any evidence of this nature, parole evidence, on that subject, on the same ground that the original objection was made to the letter, as stated at the time. Objection overruled and plaintiff excepted to such ruling.

WITNESS: Mr. Bradbury wished to substitute his note in lieu of the certificate of deposit of the Kendrick State Bank.

Defendant's COUNSEL: No you are mistaken. That was in June 1910. I am talking about December, 1911 when the loan was increased.

WITNESS: Oh. Well, we simply agreed to take \$5000 more in addition to what we had. We agreed

to increase the loan to the Kendrick State Bank. We absolutely were not loaning any money to Mr. Bradbury individually. I do not know anything about Mr. Bradbury's personal responsibility and never did as our dealings were entirely with the Kendrick State Bank.

In December 1911, the First National Bank loaned the Kendrick State Bank \$5000 more.

Q. Now you had been carrying that at the request of the Kendrick State Bank as a note of J. W. Bradbury. What did you take then?

A. We took a note for \$10,000 and placed the money to the credit of the Kendrick State Bank. The First National Bank had from time to time collateral security as indicated by this correspondence in addition to the certificate of deposit and the note of Mr. Bradbury.

I do not know what was done with this collateral security. We do not have it now. It has all been returned.

#### Examination by the Court.

We never took any note from the Kendrick State Bank except as you might call their certificate of deposit a note. That is all we had from them, and upon that certificate of deposit we advanced moneys to them, that is placed it to their account, and they could draw against it as they desired.

#### Direct Examination Continued.

It is not customary for banks, not as a bank to issue

their promissory note. This is not the only bank in the northwest that borrows money; that is an ordinary transaction. They borrow in various ways. Sometimes they will borrow it on certificate of deposit; but if for reasons they don't want to issue their certificate of deposit, the president will give his note or the vice president, or some of the directors will give their personal notes. Money is not loaned to banks without receiving any paper of any kind, either certificate or note; we always take something, but it is done in the way just outlined.

There was never any agreement between ourselves and any of the parties, either the Kendrick State Bank or Mr. Bradbury that the First National Bank would release or did release the Kendrick State Bank from obligation on account of the moneys advanced by the First National Bank. We never agreed to take Bradbury individually for the money that the Kendrick State Bank got from The First National.

#### Cross Examination.

I think at the time this \$5000 loan was made originally the entire transaction took place by correspondence; I am not sure but I believe so.

I cannot remember, when that first \$5000 was loaned and the certificate of deposit from the Kendrick Bank was taken to evidence the loan, whether from that time on the entire transaction between the two banks was by correspondence, until the fall of 1911, when Mr. Bradbury had this conversation that I

have just related. I might have seen Mr. Bradbury. I don't remember any other talks or verbal negotiations, other than the one in the fall of 1911.

The first application made for an increase of this loan from \$5000 to \$10,000 was in December 11, 1911; I think it was in the form of a verbal request from Mr. Bradbury at the time he came down. He held these negotiations with me; they did not take place partly with Mr. Mills. They were all with me.

I cannot say when we surrendered up the collaterals that were given on the first loan; I am unable to say if it was prior to the time that Mr. Bradbury came down in the fall of 1911.

Q. Well, those collaterals consisted of this certificate of deposit for \$5000 and certain notes payable from individuals to the Kendrick State Bank, didn't they?

A. The certificate of deposit was not collateral. The certificate of deposit evidenced the loan.

That was the evidence of the loan itself. And as collateral to the loan the First National Bank took certain notes of individuals payable to the Kendrick State Bank.

I cannot say whether at the time that the form of this loan was changed, on the face of it at least, and the note was given by Bradbury individually to the First National Bank, those collaterals were all surrendered. I have no figures in front of me, and I cannot remember those things. The bank did take Mr. Bradbury's individual note for \$5000 before the

loan was increased, and in addition to that note, Mr. Bradbury gave as collateral certain stock of his in the Kendrick State Bank.

I cannot say that the correspondence shows that at that time the collaterals which had been given on the original certificate of deposit were surrendered up. I know that those collaterals were surrendered up.

In response to the questions put to me by Defendant's counsel, I have testified that the First National Bank did not accept Bradbury individually on this \$5000 note, but continued to hold the Kendrick Bank.

Q. How do you reconcile that with the fact that the First National Bank accepted his individual stock in the Kendrick Bank as collateral to his note?

A. Well, I have said that it is customary for the officer of a bank to borrow money for the bank.

Q. Yes. Now, then, if he borrowed that money for the Kendrick Bank, explain will you, how the First National Bank was getting any additional security by taking stock in the Kendrick Bank itself? In other words, how would that be any collateral security any more than if I gave you a note for \$100 and should give you my additional note for another hundred? That would not be considered collateral, would it? In other words, it would not strengthen the obligation or security would it? In other words, it would not strengthen the obligation or security, would it?

A. It ought to strengthen it. It should strengthen it, yes.

Q. Why? If your claim was against the Kendrick State Bank, how did stock in the Kendrick State Bank give any additional security for the claim? How can you explain that? You already held the bank and all its assets, if it was a loan to the bank didn't you?

A. Yes.

I should think it would give additional security to our bank to have Bradbury's stock in the Kendrick Bank; I would think it would.

At the time the form of this loan was changed, it was done at the suggestion of Mr. Bradbury, in order to cover up the fact that the Kendrick Bank was borrowing money from banks; and the First National Bank was apprised of that fact, and knew that fact, and assisted him in this transaction to carry out that purpose.

At the time we changed the form of this loan, we did not call for any evidence of authority on the part of the Board of Directors of the Kendrick Bank to Authorize Mr. Bradbury to give his individual note for this loan in place of the obligation of the bank. We didn't ask for anything of that kind. It is not always customary under such circumstances, for the bank to require evidence of that nature. We went upon the theory, that Mr. Bradbury as president of the bank, had authority to borrow money for the bank on his personal obligation.

I don't know as that is the custom of banks in general to do that; it is sometimes done. We often call for evidence of the action of the board of directors;

sometimes do. We didn't in this instance. We don't always do it.

I knew nothing about Mr. Bradbury's affairs, whether or not he was supposed to be perfectly solvent at that time; I didn't consider him at all.

Q. You would not accept his individual note if you had not, would you?

A. I accepted that note for the Kendrick State Bank.

It is customary for banks to take the individual note of the president for a loan to the bank. It is done quite frequently. Our bank has done it frequently.

As a rule, I think we would in that event also take stock in the bank itself to whom we are giving credit, as collateral; sometimes we have nothing else.

So far as we knew, these notes that we surrendered up at the time we took Bradbury's individual note and his stock in the Kendrick State Bank, the notes formerly held as collateral, which we surrendered up were supposed to be good.

Q. What was the form, Mr. Newkirk, on the books of the First National Bank of the loan made for this \$5000 and this \$10,000? What was the nature of the account? How did it stand?

A. Well, I haven't looked but I think the first loan read the Kendrick State Bank, and I am of the opinion that the second one read to J. W. Bradbury, it being in his name.

I think the first loan was credited to the Kendrick State Bank, the second one was in the name of Brad-

bury, and carried that way on the loan book.

Q. State whether or not, Mr. Newkirk, at the time that Mr. Bradbury negotiated this additional loan of \$5000 with you, whether he did not tell you—

Defendant's COUNSEL: My associate has called my attention to something Mr. Newkirk said. I didn't understand it that way. Did you, Mr. Newkirk say that at the time this loan was increased to \$10,000, the money was placed to the credit of Bradbury?

A. No sir.

Defendant's COUNSEL: Well, I thought not. Placed to the credit of the Kendrick Bank.

A. Yes sir.

I did not say a little while ago that at the time the first \$5000 was loaned, the credit was given the Kendrick Bank on the Books of The First National Bank and that afterwards the account was changed to Bradbury.

Q. What did you say; I understood you to say that?

A. Tell me what you asked and I will try to answer it.

Q. I asked you in what form this account stood on the books of The First National Bank, and you said, as I understood it, that you thought it stood originally in the name of the Kendrick Bank and was afterwards changed to Bradbury?

A. No sir, I am talking about one book and you are talking about another.

Defendant's COUNSEL: That is a mistake?

A. That is a mistake of mine.

What I meant was that in the loan department, where we keep a record of these loans, that first loan went under the heading, there in that little ticker we keep, of the Kendrick State Bank, and the second loan probably went to Bradbury; but the proceeds of that loan were placed to the credit of the Kendrick State Bank.

That would be the ordinary way of handling the transaction, if as a matter of fact, Mr. Bradbury had borrowed \$5000 himself, on his personal note, of the First National Bank.

Q. That is the custom of the Bank? In other words, if a man from Kendrick Idaho, came down to Portland and borrowed \$5000 from the First National Bank on his individual note, the First National Bank for convenience, would transfer that to the Kendrick Bank account, if he kept his account in the Kendrick Bank, wouldn't it?

A. I don't believe I understand that.

Q. Well, as I understand you, you say that this second loan was probably in the name of Bradbury in the Loan Department?

A. Yes.

Q. But the credit on the books was transferred to the account of the Kendrick State Bank.

A. It was placed to their credit, yes.

That was done because he borrowed the money for the Kendrick State Bank.

If we had seen fit to make the loan and he asked

it, it would have been done so as a matter of fact, if he had lived in Kendrick and had his personal account with the Kendrick Bank and had requested it to be run through the Kendrick Bank account.

Q. It would be the natural way?

A. We would have done what he wanted done with it.

Certainly if he had requested it, if Mr. Bradbury had been an individual, and not president of the Kendrick Bank, but had an account in the Kendrick Bank in Idaho, and had borrowed \$5000 of the First National Bank in Portland, and instead of taking the money with him out of the bank had left it there, that bank, instead of opening a personal account with him, would have credited the Kendrick Bank of Idaho, with that money.

Q. That is the ordinary way under such circumstances?

A. It is often done.

Defendant's COUNSEL: I call your Honor's attention to this point. Mr. Newkirk says, "If it is requested so," but you don't put that in your question. If Bradbury requested it to be charged that way, or done that way, it would be done; and if he did not request it, it would not be done that way.

WITNESS: I cannot say, when Mr. Bradbury got this \$5000 credit, and his note was given, whether any deposit slip or credit slip was given to him by the First National Bank. Sometimes there would be and sometimes not. Naturally, if it was not given to him,

it would be sent to the Kendrick Bank, at Kendrick. And the Kendrick Bank account would be credited with that amount of money.

Examination by the Court.

I said that the Bradbury note was carried in the loan account. It was carried just the same, I think, as if the loan was made to him.

Q. Then what account did you have with the Kendrick Bank?

A. Well, because he was acting for the Kendrick Bank and as an officer of such bank, his bank is supposed to stand behind the loan we made; we credited the money of the bank and understood all the time that it was a loan to the bank.

But I think we carried it as a loan to Bradbury.

Cross Examination Continued.

I did not at that time, tell Mr. Bradbury that we expected him to keep a balance in the Kendrick Bank in his personal account equal to this \$10,000.

I supposed that he would deposit, or intended to deposit that \$10,000 to his personal account in the Kendrick Bank. That is about the only way it can be carried.

That is, I supposed that he would deposit the \$10,000 to his personal account in the Kendrick Bank, and that then the Kendrick Bank would deposit it, or the same as if they had deposited it in the First National Bank, they already had credit for it. This \$5000 note of Bradbury's was given in place of the

certificate of deposit. Then later on Mr. Bradbury asked for an additional \$5000, and gave a new note for \$10,000 signed by himself, and the old notes were surrendered.

Probably, presumably, when that \$10,000 note was given, the collateral originally held by the bank on the \$5000 certificate of deposit had been returned, but I cannot remember.

All that the First National Bank held at that time was this \$10,000 note of Bradbury's and Bradbury's stock in the Kendrick Bank as collateral of it. At the time when this \$10,000 note of Bradbury's was taken, there was nothing on the books of the First National Bank to show that the Kendrick Bank was indebted to it. There was an understanding between Mr. Bradbury and myself however. Nothing aside from your verbal understanding. Nothing except between myself and Mr. Bradbury.

#### Re-direct Examination.

Q. Mr. Newkirk, about the entries on these books, I am not very clear about that. Is there anything on the books of the First National Bank indicating that there is a charge made against Bradbury at the time this \$5000 note was taken, or the \$10,000 note was taken? Does your ledger show a charge against Bradbury for that amount?

A. Bradbury had no account with us.

Q. There was no entry against Bradbury in any of your books?

A. Only—

Q. What appears on your books?

Plaintiff's COUNSEL: He started to answer that question.

Q. Just go ahead and explain the whole thing. Show what your books show.

A. In our Loan Department, if we make a loan, we have a book in which we head the loan—to John Smith, for instance, at the head of the Smiths; make it to a bank we put it under the head of Bank. That is all there is to it. It is a little memorandum book. But that does not refer to the general books of the bank.

That was a memorandum showing that we had J. W. Bradbury's notes, first for \$5000 and then \$10,000. That was absolutely the only entry on any of the books of the First National Bank concerning the Bradbury note or notes.

#### Examination by the Court.

That note of Bradbury's was given the bank—the president—our bank for \$10,000; and we honored drafts on our bank from the Kendrick bank because of that transaction.

#### Re-direct Examination Continued.

Plaintiff's counsel called my attention to the time the loan was increased from \$5000 to \$10,000 and asked about Mr. Bradbury requesting the increase. Mr. Bradbury came to us from and represented himself as acting for the Kendrick State Bank. Our

transaction was with him as president, and for account of the Kendrick State Bank.

Plaintiff's COUNSEL: That is a conclusion, your Honor. We are not quite as strict about this testimony as if a jury was here.

Re-cross Examination.

The court asked relative to our crediting the Kendrick Bank with that \$10,000 and their drawing on it in the usual course of business, etc.—the Kendrick Bank. The First National Bank was acting as reserve agent for the Kendrick Bank here in Portland. That is correct.

Q. And in the course of business, it drew on its reserve account and replenished it, so that it fluctuated, sometimes as high as \$10,000 sometimes as low as \$100. That is true, is it not?

A. Well, I couldn't say as to that.

Q. But they did business with the First National Bank for quite a number of years, and that is the way the business was done.

A. The account fluctuated.

Q. These papers then I hand you, if you will state what they are please.

A. That is a statement of account issued by The First National Bank of Portland, statement of Kendrick State Bank's account.

Q. Both of them are?

A. Yes sir.

Plaintiff's COUNSEL: We will ask to have these

marked for identification, and we will offer them in our case in chief.

Plaintiff's Exhibit 2.

Kendrick State Bank Kendrick, Ida., in account with  
The First National Bank of Portland, Oregon.

Dr.			Cr.
1911	1911	1911	
Nov. 17 R 15 \$269.45	Nov. 17 284.17	Nov. 15, Bal 9610.28	
" 11 14.72	18 115.99	28 Int. 16.	
18 R 16 97.80	21 253.97	Dec. 11 10000	
" 14 18.19	25 354.08		
21 " 18 253.97	27 81.91		
25 " 23 254.74	28 309.05		
" 20 44.70	Dec. 1 19.98		
21 54.64	4 9.75		
27 R 22 22.50	5 11.29		
" 24 59.41	11 5100.21		
29 " 27 309.05	12 3.37		
Dec. 1 " 25 19.98	13 75		
4 R 28 9.75	14 123.47		
5 " 1 11.29	15 12882.04		
11 " 5 3.	19626.28		19626.28
" 6 5.26			
14816 16.95			
5075		Dec. 15, Bal.	12882.04
12 R 8 3.37			
13 R 11 75		21 vouchers to follow by next mail.	
14 R 12 125.47			
	Red Ink notation		
	Our balance, 2-15-11		12757.95
	1-13		8.47
	Int. Oct.		16
	D 14812		98.62
			12882.04

## Plaintiff's Exhibit 3.

Kendrick State Bank, Idaho, in account with  
The First National Bank of Portland, Oregon.

Dr.								Cr.
Dec. 18	14817	98.62	Dec. 18	107.09	Dec. 18-11	Bal	12882.04	
	R 13	8.47		19	38.50	28	Int	18.76
19	" 14	38.50	20	139.08	Jan. 13	10		1702.07
20	" 18	139.08	21	13.54		15	11	2000
21	" 16	13.54	26	34.95		1	12	1054.33
26	" 20	19	27	123.91				
	" 21	15.95	29	100				
28	" 26	108.91	30	2061.54				
		23	15	Jan. 2	10			
29	18	100	3		136.55			
30	R 29	65.65		6	1539.73			
		19	1995.89	9	313.77			
Jan.	2 R 29	10		10	125.76			
3	" 20	136.55		11	2702.05			
6	4	59.74		12	4416.69			
		22	1479.99	15	62.38			
9	R 6	313.77		15	5691.66			
10	" 8	125.76			17657.20			17657.20
11	14823	2742.05						
12	24	4416.69			Bal. Jan. 15,		5691.66	
15	R 9	42.98						
"	10	1940						

## Red Ink Notation.

Our Bal Jan 15, 1912	5753.11
Int.	18.76
L 12	10
L 11	5.45
14825	444.34
	6231.66
Our remit. 1-12-12 not credited	5.4
	540
	5691.66

Q. Now Mr. Newkirk, relative to this credit of \$10000 in your bank, to the credit of the Kendrick State Bank, I will ask you if it is not a fact that had Mr. Bradbury, at the time that he gave you this \$10,000 note, taken the money from you in gold coin, taken it to Kendrick, deposited the amount in the Kendrick Bank, and the Kendrick Bank had then forwarded the same to you as its reserve agent, that transaction would appear identically on the books of your bank as it does appear?

A. I think it would.

You understand from my testimony and from the correspondence, the object of changing the form of this loan was so that it would not show the liability of the Kendrick Bank.

Q. Now, in the form that the loan stood then, after the cancellation of the certificates of deposit and their return, and after the taking of the note from Mr. Bradbury, was that loan in such a shape that Mr. Bradbury could truthfully make a sworn report to the Idaho Bank Commissioner that there was no liability owing by his bank to the First National Bank of Portland?

Defendant's COUNSEL: We object to that question. That, it seems to me, calls for the witness' conclusion, and it is for the court to pass upon eventually in this case; and then that is a matter for Mr. Bradbury and his own conscience. It is not for Mr. Newkirk to say what he could truthfully swear to. It is a question that this witness cannot answer.

Objection overruled, and defendant excepted to such ruling.

A. Well, I don't know. I am not certain.

Q. That is the best answer you can make to that question?

A. Just let me think about that a minute.

Q. All right, sir.

A. Yes, I won't change that. I don't know.

I think I have already testified, that I considered the taking of Mr. Brandbury's personal stock in the bank as collateral security to the loan of the bank itself as an added security, that it increased the security and made it better.

Q. Will you please explain to the court on what theory you base that, that the taking of the stock of the bank as collateral security for a loan of the bank itself increases the security?

A. Well, that stock might have some value more than showed on the face of it. If it came to selling out, somebody might want it, and might be willing to pay a premium for it.

It is a fact that if I have the obligation of the bank, I have all of the stock as well as all of the assets of the bank.

Q. Then the taking of this particular stock would not increase the security, would it?

A. Just as I have told you—that might be worth something. Somebody might want that stock—might be willing to pay for it.

Q. I see. But if you have the obligation of the

bank, you could sell everything that the bank owned, could you not, in order to recover on it?

A. We could after a lawsuit, yes.

Examination by the Court.

Q. At the time you took the note of Bradbury, do you say you put that on the note account in the bank?

A. We carried it in with the notes, yes sir.

Q. Yes, carried it in with the note account?

A. Yes sir.

On the taking of that note, we passed credit to the bank in Idaho on the faith of the note. That was the idea in taking the note.

Re-cross Examination.

Q. If the loan had been made to Mr. Bradbury personally, and the money was to be deposited by him in the Kendrick Bank to his personal account, and he asked you simply to credit his bank with the amount, you would have gone through exactly the same transaction, would you not?

A. The result would have been—

Defendant's COUNSEL: That question was asked and answered this morning, that identical question. We object to it as incompetent and immaterial. There is no such transaction before the court.

Objection overruled, and defendant duly excepted.

A. The result would have been the same.

Q. This note account on which the note of Bradbury was entered in the bank, what is that, a book?

A. Well, we have no such thing as a note account.

We have our bills receivable.

Q. You said that when this note of Bradbury's was taken, it was entered in some book in the bank. What book do you call that?

A. Well, that is a bills receivable ledger.

Q. That is just as much a book of the bank as any of the other books of the bank?

A. No, it is not one of the general account books of the bank. It is a memorandum pertaining to that department.

(Excused.)

Telegram received by the First National Bank of Portland from V. W. Platt, State Bank Commissioner of Idaho, dated Feb. 8, 1912, offered in evidence and marked Defendant's Exhibit R.

Defendant's Exhibit R.

First Nat. Bank, Portland, Ore.

This is to advise you that the Kendrick State Bank, Kendrick, Idaho, is now in my hands for liquidation and that balance due this bank as shown by your books to be held subject to my orders forward detailed statement closes business today.

V. W. Platt, State Bank Commissioner.

ELLIOTT CORBETT, a witness on behalf of defendant, testified as follows:

Direct Examination.

I am connected with the First National Bank in the capacity of Assistant cashier. I think I was such last January or February a year ago. I was assistant note

teller and then assistant cashier. About that time the change took place—I believe the first of January.

I heard you read the telegram from Mr. Platt, bank commissioner of Idaho. I am familiar with that telegram; I received it as one of the officers of the First National Bank.

Q. What did you do in pursuance of that telegram? What investigation did you make about the bank—just a general statement about its condition?

A. After we received the telegram—I believe the telegram asked for a statement, we merely sent a statement. The auditor made out a statement and forwarded that to the Bank commissioner.

I went to Kendrick to make investigation as to whether the State Bank of Kendrick was at this time solvent or insolvent or in the hands of the state bank commissioner. I found that the state bank commissioner had taken charge of its affairs. I returned about three days later, I don't remember the date.

When I returned from Kendrick, and after making my investigation, the deposit to the credit of the Kendrick State Bank in the First National Bank I charged on the note that we had from the Kendrick Bank signed by J. W. Bradbury. This note represented a loan to the Kendrick State Bank of \$10,000.

I heard Mr. Newkirk's testimony this morning. That is the same loan he referred to.

When I went to Kendrick, I saw the parties that were interested in the Kendrick State Bank and had a conference with them about the affairs of the bank.

Q. And about moneys due the First National Bank?

A. The Depositors' Committe, I believe, was meeting at the time in the Kendrick State Bank.

I talked with them.

Q. What did they say to you about it?

Plaintiff's COUNSEL: Objected to as incompetent and hearsay, and they have no authority to bind or represent the bank. There is no pleading to that effect, and besides, whatever they said could not change the legal character of this transaction, could not constitute a waiver, or anything of that kind, on the part of the bank. If it is offered for that purpose, then it is inadmissible under the pleadings, there being no charge of that kind in the answer.

COURT: I am inclined to think you are right about that, but I will allow the evidence to come in under the same ruling as made this morning, and reserve the question. To which ruling plaintiff duly excepted.

Q. State what took place at the meeting.

A. I went to Kendrick, and upon arrival there called at the bank and the bank examiner had it in charge. I believe his assistant was then in charge. And they were sorting out the notes and classifying them, the assets of the bank, as to whether they were good, slow, or bad. And I asked them what there was there, what salvage there was for the First National Bank, what I could get, and they were not prepared to say at the time. Later on in the afternoon I again

went there, and they offered me notes which they had culled out of a pouch, which I knew nothing about, and after learning what they were, I then asked Mr. Bradbury if there was any value to them. He said that there was no value whatever, and I let the matter drop.

I don't believe there was anything said at that time by any of the parties there that the First National Bank hadn't any claim against the Kendrick State Bank; going upon the train was possibly the only suggestion as to that by the bank examiner. I went up from Lewiston with the bank examiner on the train. And he was the one that suggested it.

'Q. That there might be some objection to the First National Bank; but at this meeting of depositors who were looking after the affairs of the bank, there was nobody disputing the bank's claim?

A. No, no.

Cross Examination.

Q. I suppose you knew nothing at all about what authority these people had to represent the bank, except the statement made by some of them that they represented the depositors?

A. Well I knew that one was acting for the Bank examiner as receiver; he was Mr. Platt's assistant. This was very shortly after the bank had been taken possession of by the commissioner.

It is not a fact that instead of this proposition having been made by the representatives of the depositors and the bank commissioner at that time for a settle-

ment of the claim of the Portland bank against the Kendrick Bank, it was offered for the purpose of getting possession of the stock of the Kendrick Bank which was held by the Portland Bank as collateral, and for the reason that they desired that stock because they intended to reorganize the Kendrick Bank, and needed it for that purpose. Nothing was said at that time about the stock whatever. That was not brought up until the afternoon at the time I was leaving, when Mr. Platt wished the stock, and I suggested that he come to Portland, or that I would send it to them; that, as far as we were concerned it was valueless.

He desired the stock to reorganize, I imagine. He stated that purpose to me at that time.

I arrived in Kendrick in the morning, sometime in the morning and left in the afternoon. It was in the afternoon of the same day that he stated the purpose for which they wished that stock returned. I came back to Portland that night. Mr. Platt did not come down with me. I believe he came later. He came in to Portland, I don't know whether it was the next day or two days later. He saw me at that time. He requested this stock of the Portland Bank then. I did not offer to give him the stock provided he would permit the Portland bank to charge this balance off against this note. He didn't make that proposition.

Mr. Platt arrived in the evening, and he came to the bank, and I had kept the stock out of the vault

prepared to give it to him, and handed it to Mr. Platt and notified him at the time that I handed it to him that during banknig hours of that day we had charged the balance to the account against the note.

He did not make the request that he be permitted to take the stock back on those conditions. I did not put those conditions to him at all. He did not take the stock?

Q. No, the Portland Bank kept the stock?

A. He didn't want it. He wouldn't take it.

Q. I say, the Portland bank kept the stock?

A. It remained there yes..

It is not a fact that the Portland bank kept the stock because he would not agree to those conditions. We did not put those conditions to him.

I made the statement in my direct examination that this note of \$10,000 of Bradbury's was for an indebtedness of that amount of the Kendrick Bank to the Portland bank; evidence of the indebtedness.

Q. On what theory do you base that? How do you know that?

A. It was always understood as such.

It was understood between the bank and the Kendrick State Bank. No such agreement was ever made with me personally. All I know about it is what I knew from the cashier and from the fact that I was at that time in the note cage. From the fact that at that time I was in the note cage and considered it a renewal of the Kendrick note.

Q. What I am trying to get at is, on what basis or

fact you base that theory. Now, you said partly on statements made to you by Mr. Newkirk? That is correct, is it?

A. Yes.

And on my own knowledge of the transaction; I knew that Mr. Bradbury had come down there to increase the loan for the Kendrick State Bank; I did not hear him say that. All I know about that actual transaction is what Mr. Newkirk told me. That is the fact of the matter.

Redirect Examination.

The stock of the Kendrick State Bank has been returned to that bank. I did not mean to have counsel infer that we still hold the stock.

Recross Examination.

That was returned some time later. I don't know the exact date.

Q. Quite awhile later, after the transaction that you have related? Some time after that, wasn't it?

A. Some time after that, yes.

Defendant's COUNSEL: March 12th, wasn't it?

A. I am not sure of the date.

On this trip that I made to Kendrick that I have testified, I ascertained at that time, from the figures that were shown me, that the Kendrick Bank was practically insolvent, and I came to that conclusion. I did not also investigate the financial responsibility of Mr. Bradbury at that time. I didn't make any inquiries about his responsibility.

I was to investigate the validity, or rather the responsibility of the bank to the First National Bank, to ascertain how good our claim was.

And I knew that the evidence of that claim consisted of the personal note of Bradbury. And I have testified that that note was given for that debt of the bank to the First National bank. And still I didn't investigate the financial responsibility of Bradbury at all, because I didn't consider that Mr. Bradbury was indebted to us at all. It was always understood that it was the Kendrick Bank. I was not instructed to investigate Mr. Bradbury's financial standing when I made the trip. I did not talk over with Mr. Newkirk, before I made the trip, the purpose for which I was making it. He just sent me up there to see in what shape the Kendrick State Bank was.

Q. Yes. And when you went up there you knew what evidences of this debt were held by the First National Bank, didn't you?

A. I knew what?

Q. What securities or evidences to cover the debt the First National Bank held?

A. Yes.

The very purpose of a trip like that would be to ascertain how good the paper or other collaterals held by the First National Bank might prove to be. That is a fact.

Q. And did you then consider that this note of Bradbury's was one of the collaterals that the First National Bank held for that loan?

A. One of the collaterals?

Q. Yes.

A. That was the note of the bank itself.

Q. I know what it was. I am asking you whether or not you considered at that time that this \$10,000 note of Bradbury's was a collateral to assist in the securing of that claim of the First National Bank against the Kendrick Bank?

A. No, I didn't consider it as a collateral.

I didn't investigate his responsibility for the reason that I didn't recognize Mr. Bradbury as an individual in that at all.

If the Portland Bank had held Bradbury's note of \$10000 as one of the collaterals for this indebtedness, naturally I would have considered it my duty to investigate his standing.

Q. And you would have done so. That is all.

(Excused.)

J. W. BRADBURY, called as a witness on behalf of the defendant, testified as follows:

#### Direct Examination.

I am the J. W. Bradbury mentioned in the testimony in this case and was president of the Kendrick State Bank at that time. I was elected president in December 1904; I took over the bank; some one else had it at that time, and I was elected president and remained president up to the time of its suspension. I was president, then, on June 11, 1910.

Q. A letter has been introduced in evidence here,

dated June 11, 1910, signed by you as president, and directed to A. L. Mills, of the First National Bank of Portland, Oregon, which you heard read, I take it. Do you remember the occasion of your writing that letter asking for this \$5000 credit?

A. Not definitely. I remember in general that I wrote such a letter. I could not recall the words.

The First National Bank of Portland had been our correspondent before that time. On this date, June 11, 1910, I simply wrote to the First National Bank of Portland, telling them that I needed to make a loan of \$5000. I received an answer, I don't remember the date, that they would allow me to make the loan.

Q. State if that amount was kept on deposit, substantially, by your bank from that time on up to the time of the increase of the loan later on.

A. You mean, did the balance amount to that much?

Q. Practically so, yes?

A. Well it fluctuated back and forth. Part of the time I possibly overdrew that amount.

The money was deposited down here to the credit of the Kendrick State Bank, and checked against by the Kendrick State Bank, and the Kendrick State Bank also deposited at times. And kept an open balance there. When that loan matured, it was continued. I don't remember how often. I don't remember whether the C. D's. were made for three months or six months.

Q. Well, the record shows that it was continued

up to December 6th, and then a letter from you is introduced here of December 6, 1910, asking for a renewal for six months.

I recall that circumstance. And it was renewed. You read that portion of the letter to me, which has been introduced in evidence: "We are writing you on another sheet for this to be carried in another way with our reasons for asking for the change." I recall writing that.

Q. And then upon the other sheet there is a statement with reference to changing the form of the account. State to the court now just what occurred between you and the bank here with reference to that.

A. Well, I think the body of that letter covers it all. I simply wrote and told them my reasons for changing the form of the loan, and asked them might I have that kind of accommodation.

And they agreed to it. It was never, at that time or any time agreed between the First National aBnk and myself that the account against the Kendrick State Bank should be released. There was never any such agreement as that.

Q. These transactions that I have called your attention to took place in 1910. Now in December, 1911, this account was increased from \$5000 to \$10,000. Do you remember that occurrence?

A. Yes sir:

I needed an extra accommodation of \$5000 and I made a trip down here especially to see Mr. Mills or Mr. Newkirk, of the First National Bank. I told

them the situation I was in, I wanted to borrow the money and make the loan for \$10000, made an increase of \$5000 over the original loan.

When I say "I" I mean myself as president of the Kendrick State Bank. I made the trip and I made the arrangements with the First National Bank to borrow the money. That increased sum, the extra \$5000, was borrowed for the bank.

At the time I made that arrangement with Mr. Newkirk or Mr. Mills, or whoever represented the First National Bank, it was not agreed between us that the account against the Kendrick Bank should be released at all.

At that time I gave a note to the First National Bank. And the money was deposited in the First National Bank to the credit of the Kendrick State Bank and was utilized by the bank in checking against it. As president of the bank, I knew it was there.

Q. One of these letters, perhaps several of them, one of them, at all events, is signed by you individually. Can you recall that letter? It is upon the Kendrick State Bank paper. I will ask you now to state, was that letter signed by you as an individual or did you intend it as the act of the president of the Kendrick State Bank?

Plaintiff's COUNSEL: Objected to as contradicting the written instrument, or attempting to.

Defendant's COUNSEL: You don't object on the ground of not having identified the letter?

Plaintiff's COUNSEL: No. It is objected to on

the ground that parole evidence is inadmissible to vary or contradict the written letter. It is not ambiguous, and shows on its face just what it means.

Objection overruled, and ruling duly excepted to by plaintiff.

'Q. I will ask you to state, Mr. Bradbury, in answer to that, with reference to several of these letters, some of which were signed by you individually, were they intended by you to be the act of the Kendrick State Bank by its president?

A. They were.

I did not have any arrangement with the First National Bank individually. Not at all at any time.

The Kendrick State Bank paid the interest on these notes from time to time as it fell due. The Kendrick State Bank paid the First National Bank. And the account was carried that way up to the time the bank closed. I don't know whether or not I, individually, ever paid any of this interest. Some of the times I would charge interest out of my own account on different obligations I had, and part of the time I charged it up to expense. These things could be checked back and found.

Q. There has been some testimony introduced here with reference to certain stock of the Kendrick State Bank owned by you, and deposited by you with the First National Bank. Tell the court what became of that stock.

A. The First National Bank of Portland returned it to me, and I turned it over to Mr. Martin V. Thom-

as, now president of the Kendrick State Bank. He is now the president of the Kendrick State Bank.

Q. Well, who was he then?

A. Well, that is a question. At the time that I turned it over to him, under certain form he was president, but I think that that was all done away with, and I don't think he was anything except one of the depositors, one of the committee of the depositors.

I turned that over to those people, at the request of the committee of depositors. They said they wanted it because it would expedite the reorganization of the Kendrick State Bank. They were then in process of reorganization. Had they not got that stock, they would simply have had to liquidate it, and form a new organization, and kill that stock off, and organize and reissue it.

So they took my stock that was down here with the bank. All of it, and I got nothing for it.

At the time the Kendrick State Bank closed, there was a credit due me of something over \$10000, ten thousand one hundred and something, I believe, if I remember rightly.

When it closed and these people were in the process of settling it up and reorganizing it, and negotiations were going on between us, I told those people whose money that was.

Q. What money did you say it was?

Objected to as incompetent. Objection overruled; exception taken by plaintiff.

Q. You may state Mr. Bradbury, what you told

them about that money that apparently was yours?

A. I told them that the money did not belong to me, that it was the First National Bank of Portland's money.

I told them that on two different occasions that I know of, one time when the committee waited on me at my home, and another time when I was up in the Kendrick State Bank's office.

I don't remember just how many days after the closing of the bank the first conversation took place. It could not have been many, probably two or three, a couple of days, something like that.

As a part of that conversation and the transaction that occurred there, I signed a check in favor of Mr. Thomas for the \$10,000. Checking out to them all the money that was in the Bank in my name. This check was signed in the Kendrick State Bank office, at the second interview. At the time I signed the check, I had told them twice whose money it was.

I didn't get anything for that check that I signed to them. I didn't turn over the stock at that time. They had part of the stock in the bank. This Portland stock was some time later getting up there. I turned it over later on. There was nothing else turned over to them, I didn't have anything else.

So then the situation was that they took all I had, bank stock and everything, and the money that stood to my credit in the bank.

Q. And now the claim is that this is your debt to the First National Bank, is that it?

A. I don't know what they think about it.

Q. Well, I don't either.

Plaintiff's COUNSEL: If that was all, that would be it. But that is not all.

Cross Examination.

I got nothing for that check, I say.

Q. This is the check, isn't it?

A. That is the check.

Check introduced in evidence and marked Plaintiff's Exhibit 4, as follows:

Plaintiff's Exhibit 4.

Kendrick, Idaho, 2-12 1912. No. 270.

KENDRICK STATE BANK  
of Kendrick, Idaho

Pay to the order of Martin Thomas trustee, \$10000.00  
Ten thousand no-100 Dollars. J. W. Bradbury  
Endorsed on face: Paid Apr 9, 1912, Kendrick State  
Bank, Kendrick Idaho.

(Endorsed on back as follows:)

Note, H. E. Abend,	\$5000.00
Note A. Bradbury	5000.
Note L. P. Bradbury	5000
Note J. W. Bradbury	5000
Note P. E. Buntin	2500
Note Geo. K. Reed	2500

This check to become available on delivery of above mentioned notes to J. W. Bradbury. Endorsed by Martin V. Thomas trustee.

Q. You have just stated with reference to Plain-

tiff's Exhibit 4 for identification, that you received nothing for this check. I will ask you to read the indorsement on the back of the check.

A. "Note H. E. Abend, \$5000. Note A. Bradbury \$5000. Note L. P. Bradbury \$5000. Note J. W. Bradbury \$5000. Note P. E. Buntin \$2500. Note Geo. K. Reed \$2500. This check to become available on delivery of above mentioned notes to J. W. Bradbury."

That indorsement is in my handwriting. Those notes were not delivered to me.

Q. Haven't you ever received them?

A. I have.

Q. Then they have been delivered to you, haven't they?

A. Not on that, no sir.

Q. I ask you if the notes have ever been delivered to you?

A. We are talking about that check now, aren't we. Now if the court—your Honor may I digress here and tell the circumstances of this? I don't want to get mixed up on this proposition, or anything of the kind. I want to tell how I got those notes, and in what manner I received them.

COURT: Do you object to that?

Plaintiff's COUNSEL: I think he will have ample opportunity to explain, your Honor.

Defendant's COUNSEL: You may as well let him tell it now.

Plaintiff's COUNSEL: We will get at it. It is simply a matter of procedure.

COURT: How much is that note for?

Plaintiff's COUNSEL: \$10,000.

COURT: Proceed with the examination. You will have a chance to explain later on.

I received the notes that are indorsed on the back here as the check being given for.

No sir, I did not receive something for the check.

These parties whose names I have indorsed upon the back of this check as owing notes for which I gave the check, to-wit, H. E. Abend, \$5000, A. Bradbury, \$5000, L. P. Bradbury \$5000, J. W. Bradbury \$5000, George K. Reed \$2500, and P. E. Buntin \$2500 well, they are relatives and friends.

Yes they are relatives and friends of mine. The Kendrick State Bank held those notes. The notes were given to make up the capital stock.

These notes were not given by these individuals as payment of stock subscriptions to the Kendrick Bank. They were given to take up an old debt of the institution which was running when I took the bank. These parties did not receive stock in the bank as a consideration for these notes.

Some of them were stockholders of the bank. I think at different times probably all of them were, at different times. I think some of them held 500 shares, or \$500 worth.

I could not remember exactly which ones of these individuals were stockholders of the bank at the time that the bank closed. I think Mr. Abend was a stockholder, and A. Bradbury. I don't remember whether

L. P. Bradbury was a stockholder or not. Mr. Buntin was not a stockholder. I was of course. George K. Reed was not a stockholder. The others were stockholders.

Q. I will ask you if it is not a fact that in addition, and as a further consideration for this check, these individuals here whom you have identified as stockholders were released from any stockholders' liability to the bank?

A. Not to me, they were not, no.

Q. Wasn't it understood by and between you and the depositors' committee, or the committee that you did business with in connection with this matter, that the giving of this check would relieve these stockholders from any liability as stockholders?

A. Not from my standpoint, it was not; there wasn't any of those people responsible for any amount of that money.

I didn't consider they were responsible. As far as I was concerned, it was not understood that there would be no effort made to hold them responsible on the giving of this check.

I don't know whether it was understood as far as he was concerned.

There might have been something said about it; I don't remember. I would not say that that was not a part of the consideration.

I say I did receive those notes.

Q. Now you desired to explain awhile ago under what circumstances. You may go ahead and explain

that to the court.

A. I received those notes about one week ago.

The notes were not cancelled at the time of the giving of the check. I know they were not. I have since received the notes. I couldn't say where they were in the interim.

I don't consider I have received consideration for the check to that amount.

COURT: How did that indorsement come to be made on that check?

A. At that time this committee wanted me to turn over this \$10,000 to them, and I objected, and told them the money was not mine. I was acting under the advice of my attorney from Moscow, Mr. Morgan, and he advised me to give them the check for it, for he said, "It don't make any difference anyhow. They will grab this money. It don't make any difference. If they can't get it on this stock transaction or your check, they will simply assess it out of you on the stock, so you might as well give them the check, and let it go at that, and make the indorsement on the check."

COURT: You were a stockholder at that time?

A. Well, I couldn't say whether I would be or not. The bank was then in the hands of a receiver, and the possibilities are that I was not a stockholder. The stock was still in my name.

I owned the stock that was on deposit with the First National Bank here at that time.

Q. As collateral for this note of yours?

A. I owned that stock, yes.

The total amount of the liability as shown by the indorsement on this check was some \$25000. that these parties owed the Kendrick Bank. This check, as I state, was given in consideration of the cancellation of that indebtedness as I have indorsed here on the back.

At the time that I gave my first note, the facts leading up to that transaction are substantially as they are set forth in the communication from me to the First National Bank, that is in evidence here, and that was referred to by counsel in his examination of me. In fact, I had no personal communication with them at that time. It is all contained in that letter.

Q. The end that you sought to attain by changing the form of that loan was that you could make a report to the bank commissioner that would not need to show a liability of the Kendrick Bank to the Portland Bank? Is that not true?

A. Not necessarily. I didn't take the bank commissioner into consideration at that time. I never gave him a thought. I didn't want it published. That was the reason that I made it in this way. Not on account of the bank commissioner, but it was on account of the published statement.

The published statement is simply an extract of the statement that we are required to make under the law to the bank commissioner.

I considered this note of mine an obligation of the Kendrick State Bank. And I always considered that

that was a liability of the Kendrick Bank. I couldn't remember whether I so showed it in my reports to the bank commissioner. The statements will show probably.

Q. If you will just look at those, please.

A. That account doesn't appear. There is one statement here that shows C. D. of the Traders' National Bank, that is included in our time C. D.'s.

Q. Mr. Bradbury did you understand my question? If you will kindly confine your answer to the question, we will get along much quicker. I never mentioned anything about the Traders' National Bank. I asked you if your reports to the Bank Commissioner subsequent to the execution of that note showed any liability from the Kendrick Bank to the First National Bank of Portland.

A. No sir.

I don't think I have an explanation to offer as to how I could swear to such a report as that, in the face of my statement that that was the obligation of the Kendrick Bank.

At the time that I gave my note to the First National Bank, the First National surrendered up the certificate of deposit that it had previously held and all of the collateral, to the Kendrick Bank. And it left the First National Bank holding nothing but my individual note for \$5000 and a certain number of shares of my individual stock in the Kendrick Bank. That is true. I considered that the obligation of the Kendrick Bank.

It is a fact that immediately upon the taking of my note by the First National Bank I entered a deposit to my individual credit in the Kendrick Bank for the \$5000. I did it that way because I might as well enter it in that account as any other. I never considered it as my money.

I have entered other people's money to my credit in that bank. They had reasons for having it done that way and I had reasons for doing it. I had no particular reason for entering the Kendrick Bank's money to my individual credit, only that was the simplest way to carry the account.

Q. If the Kendrick Bank had made the loan, couldn't you carry it as an obligation of the Kendrick Bank?

A. I could have, yes.

Q. You could have?

A. That would have brought me right back to that published statement again.

The idea was to put it in a shape where I could make a loan under cover as it were. That is correct. And I considered it an obligation of the Kendrick Bank though evidenced by my individual note, and the amount deposited to my individual credit.

Then when I renewed this \$5000 note and got \$5000 more, I also put that to my individual credit.

Q. You used this money in your business transactions, your individual transactions, did you not, from time to time?

A. I never touched that balance.

Q. Is it not a fact that your balance was reduced below \$10,000 after you secured the second loan?

A. It might have been; not materially though.

I did check on that account for my individual purposes all the time. That is the only account I had. I don't know whether Mr. Newkirk knew that I had deposited this to my individual credit in the Kendrick Bank. I suppose he did.

I don't think it is a fact that, in my conversation with him at the time that I made the second loan, he stated that he desired me to keep that personal account of mine intact, in order that they could have me give them a check for the amount of the note on demand at any time.

I don't remember any conversation like that. I instructed them to at any time charge the account of the Kendrick State Bank with them with the note.

I don't remember whether he told me that he wanted me to keep my account intact there, that he wanted me to keep the \$10,000 to my credit, so that he could secure the money on demand. He may have. I don't think so.

Q. I will ask you, Mr. Bradbury, if it is not a fact that, in a conversation between Mr. Eastwood, who was then assistant bank commissioner of the State of Idaho, and yourself, had in the City of Spokane in the month of December, 1912, substantially this conversation was had: Mr. Eastwood in discussing this affair said, "Was it understood that the balance in the Portland Bank to the credit of the Kendrick Bank

was to be kept up to the full amount"? And you stated, "No the understanding was that I was to keep my individual account intact, or up to the amount of \$10,000 so that on demand at any time I could give them a check for the amount."

A. I don't remember any such conversation.

Q. Will you say that you had no such conversation?

A. With Mr. Eastwood?

Q. Yes.

A. No, I wouldn't say that I had no such conversation.

But I don't remember it. I have no recollection of it. I had no such understanding with the First National Bank about my personal account. I had an understanding with the First National Bank, or I told them that I would keep that balance there in the First National Bank of Portland virtually \$10,000 at all times, at any time the remittances from Portland came up to the Kendrick State Bank and cut that balance down, that immediately as fast as I could, I would build it up to the \$10,000 mark again, which I tried to do.

Under that \$10,000 loan, that balance of the Kendrick Bank in the Portland Bank was not reduced as low as \$400 at times—not under that \$10,000 loan, I don't think so.

In my report to the Bank commissioner of date September 1, 1911, I may possibly show a balance in the First National Bank of Portland of \$69.56; it must be

if it is there. It was reduced to that extent at that time; and it fluctuated all the way from 69 dollars and something to \$10,000.

Defendant's Counsel: What date was that \$69 balance?

Plaintiff's COUNSEL: That was in September 1911 I think.

Defendant's COUNSEL: Was this after that \$10,000?

Plaintiff's COUNSEL: September 1, 1911.

Defendant's COUNSEL: Before the \$10,000.

Plaintiff's COUNSEL: Yes, but after the \$5000. It was after he got the \$5000.

Defendant's COUNSEL: Oh yes, we don't question that. But I thought that after the \$10,000 it never had got that low.

Some of the interest payments on these notes were charged to the Kendrick Bank; I didn't say that all of them were. As I said, it was a mere matter of my choice that they were not all charged to the Kendrick Bank. Sometimes I charged it to my individual account and some of the time I charged it to expense.

I paid very many of the debts of the bank by charging it to my individual account. I did it because I was the bank; I did as I pleased with it. I treated it as my individual account—the whole business.

#### Redirect Examination.

I owned \$23000 of stock in that bank. I practically owned it all, except some organization shares. The

capital stock was \$25000. The other was owned by relatives of mine, so that I was practically the bank.

Q. Now there is an indorsement upon this check speaking of the release of certain notes in consideration of the check, and you then repeated, after being shown that, that you got no consideration for the check. I will ask you to explain to the court what those notes referred to on the back of that check were given for, and how you came to be responsible in any way for them. Detail that transaction that took place at the time you took over the bank.

A. Well, when I took over the bank, I took it from Spokane parties. Mr. E. J. Dwyer of the Exchange National Bank, was the main owner of the bank. In fact, he virtually owned the bank the same as I did afterwards. It was in very bad condition, and a friend of his advised me to go up and buy the bank. I told him I had no money. He told me it would take no money to buy it. I went up to see Mr. Dwyer, and he told me, "If you will take the bank, assume the obligations, I will give it to you—give you the stock. There's one or two accounts I must take up that I am personally obligated for down in the bank." So we made the trade. And one of their accounts that they carried at that time was an account called "Bad Debts," that amounted to something over \$26,000. I carried that account along with bad debts as long as I could, and absorbed what little profits I made, until the state appointed a state bank examiner. Then I had to charge those off, those accounts, together with

other bad debts; and in order to make that up I gave my notes and my people's notes to the amount of \$25000 to do that; and these are the notes that have been carried along.

These notes mentioned on the back of that check and my note were given to wipe out that account called bad debts, for which I never got a dollar and my people didn't.

I supposed that Mr. Newkirk knew that this money was credited to my account up there in the Kendrick Bank just from the natural procedure of business. I did not have any talk with Mr. Newkirk about it; there was no arrangement to that effect about it that I know of.

'Q. And counsel asked you if it was not agreed between you and Newkirk that you should keep that account up in the Kendrick Bank intact. Was there ever any such talk as that at all?

A. No sir.

Plaintiff's COUNSEL: He did state there was not.

Defendant's COUNSEL: I was wanting to identify it so to be sure you didn't mean the account down here.

Plaintiff's COUNSEL: No.

I had no conversation with him at all about my personal account in the Kendrick Bank.

There was no other collateral for the \$10,000 note.

#### Recross Examination.

At the time I bought out this Kendrick Bank orig-

inally as I have testified and these bad debts of about \$20,000 or so stood on the books of the company, you could consider that I bought the stock of the bank. In the trade the stock of the bank was transferred by the former stockholders to me; that is a fact. Not the entire \$25,000. There was some of the stock held. \$25,000 was the capital of the bank at that time. I think probably \$24,000 of it was turned over to me. There was some of the balance transferred back and forth; I couldn't say exactly how it was transferred.

Redirect Examination.

The people who signed these notes never got any consideration for them. They just signed to accommodate me.

Examination by the Court.

I did not have anything to do with the reorganization; I have no interest in the reorganized bank.

At the time I signed this check of \$10,000, or at the time I signed the note to the First National Bank of Portland, I said that I had placed to my credit in the Kendrick Bank, an equal amount. I just simply made a deposit slip for the \$10,000 as deposited in the First National Bank of Portland in my own name. Of course, I didn't deposit any \$10,000, just the credit. I credited my account and charged the First National Bank of Portland for the amount.

Recross Examination.

Q. So, as a matter of fact, it stood on the books just the same as if you had brought the money up

from the Portland Bank and put it in the Kendrick Bank in your own name, and then the Kendrick Bank had deposited it in the Portland Bank in its reserve? That is a fact, isn't it?

A. No, I don't think you would consider it just the same. The entries would be different.

Q. In what respect?

A. Well, in the first place had I brought that money up in gold coin there would have been marked on the deposit slip "Gold coin" for the \$10,000, and Portland would not have been charged.

Q. As a matter of fact, you entered it on your deposit slip by crediting the First National Bank of Portland?

A. I think so.

Q. Substantially that?

A. I think so.

Q. Instead of Gold Coin deposit.

A. Yes sir.

Q. That is the only difference, isn't it?

A. I imagine so, yes sir.

(Excused.)

Defendant rests.

EMMETT E. EASTWOOD, recalled for the plaintiff in rebuttal, testified as follows:

#### Direct Examination.

I heard the testimony of Mr. Bradbury when he was on the witness stand. I heard the question propounded to him relative to a conversation had with

me in Spokane in December of last year, in which he made a statement to me relative to the understanding between himself and the Portland Bank as to keeping the \$10,000 in his individual account intact.

At that time I was an employee of the State Banking Department, I was deputy state bank commissioner. At the time we turned over the Kendrick State Bank to the new organization, or reorganized the Kendrick State Bank, there were still a number of bad debts left in the account. We had anticipated recovering this amount, this balance that was due from the First National Bank at Portland to wipe out those debts, and as a member of the state banking department, I was urging the Kendrick State Bank to take action to recover this amount, in order to clean up the bank in a condition satisfactory to the State Bank department. I was working in the northwest part of the state in December of 1912, and met Mr. Bradbury in Spokane, in the office of Hallet Bros., with whom he was connected at that time, I don't remember the date, but it was some time in December—and engaged him in conversation about this matter, with a view of finding out how the transaction stood, or how he regarded the transaction. I asked Mr. Bradbury if there was any understanding between him and the First National Bank of Portland that the Kendrick State Bank's balance should be maintained to the amount of the note of \$10,000, and he told me that there was not; that the understanding he had with Mr. Newkirk at the time he ne-

gottiated the additional loan of \$5000 and executed his note for \$10,000 was that his personal balance on the books of the Kendrick State Bank was not to be reduced below \$10,000 in order that he might be able on demand to give his check for the balance that he had there, and thus pay the First National Bank of Portland, which of course would be handled through the Kendrick State Bank.

I heard the testimony of Mr. Corbett when he was on the stand, particularly with reference to the stock that was held by the First National Bank as collateral.

I heard his statement relative to the conversation that he had with me and Mr. Platt and the Depositor's committee at Kendrick relative to the surrender of that, and relative to the tendering to him on behalf of the First National Bank of certain notes.

The transaction was with the idea of releasing the stock that was held by the First National Bank as collateral, in order that we might reorganize the bank. If we had wanted—I am speaking as at the time receiver of the Kendrick State Bank—if we had wanted to pay the First National Bank of Portland, we certainly would not have offered them notes. We would have paid them with the balance that we had on hand here. We as receiver or as the state bank department—none of the members of the state bank department would have had any authority to pay the First National Bank of Portland.

The conversation between Mr. Corbett and Mr.

Platt and I and the members of the Depositors' committee, was simply we were trying to arrange some means whereby we could get a release of the stock that they held, in order that we might reissue it to new stockholders, who had agreed to take the stock and pay in money—resubscribe the capital stock. That was the substance of the conversation.

There was no offer made to pay any obligation to the First National Bank.

I heard Mr. Bradbury's testimony relative to giving this \$10,000 check to Mr. Eastwood. I was party to the general transaction. I heard his statement to the effect that he received nothing for that check.

The Kendrick State Bank held the notes that are referred to, that are indorsed on the back of the chck, as a part of their assets at the time the bank was closed by the department. We were laboring at the time with several plans of reorganization. We wanted to reorganize and turn the bank over to these new stockholders. The transaction was really a transaction between Mr. Thomas and Mr. Bradbury, because the Banking department would not have had any authority to have turned these notes back to Mr. Bradbury. But it was agreed between Mr. Bradbury and Mr. Thomas that in the event the bank was reorganized and resumed business, they would turn the notes referred to back to him, provided he would surrender this \$10000 for which he had credit on the books, and for which the Kendrick State Bank was liable to him as depositor, they would surrender these

notes and release them from any stockholders' liability. Under the laws of Idaho, there was an additional liability of 100 per cent on the part of the stockholders. Mr. Bradbury said that he was particularly anxious about his father who was maker of one of the notes, as he was rather an aged gentleman, and he had some property, he had a farm out there in the Palouse country, which was quite valuable, and he didn't want him to become involved in any controversy, or lawsuits, or suits to recover any amount, at his age.

And these notes were surrendered as a consideration of the payment of that check; and they were charged off the assets of the bank when we turned it over to the new institution. I made the entries before I turned it over to them.

I heard Mr. Bradbury's testimony to the effect that there was absolutely no conversation or understanding had relative to the release of any of these stockholders of their stockholders' liability as part consideration of turning over that check.

The facts are that there were a number of conversations relative to the liability of the stockholders. He didn't seem to be concerned in any, however, except that of his father, as I have stated before. But that was a part of the consideration.

As to these notes themselves, they were a liability to the Kendrick Bank. As to what they were given for, I understood in a general way, but I didn't have any personal knowledge as to what they were given

for of course.

Cross Examination.

I could not tell how long these notes have been in the bank without referring to the loan register of the bank, or some of the records of the bank. I went through all of the books of the bank while I was in charge of it.

I could not say whether or not there was ever any interest paid on any of those notes without referring to the bank records.

I do not know what effort was made by the bank to collect them at any time; I was not connected with the bank prior to the time the bank closed. I know in a general way if they were worth anything at the time the bank closed; by a general way, I mean I know that Mr. Bradbury, A. Bradbury, the father of J. W. Bradbury, owned a farm out in the Palouse country there.

I have been told as to what it is worth; personally I would not be able to testify.

Ed Bradbury, a brother of J. W. Bradbury, at the time was owner of practically half of the capital stock of the Lincoln McRae Hardware Company. I have never had occasion to go through the records of that company.

We didn't undertake to collect those notes. We considered them as an asset of the bank while we were in charge, but they were surrendered for a consideration. We permitted the newly organized bank to cancel them and surrender them in consideration

of this \$10,000 that was paid into the newly organized bank to help it carry the losses which the banking department charged out. I consider them worth \$10,000.

I can safely say that I considered that the property that the note makers owned at the time was well worth \$10,000. And we took the check in payment of those notes because the property was worth it.

The transaction with the First National Bank of Portland had nothing to do with our surrendering the notes to John Bradbury. It was in consideration of this deposit of \$10,000 we cancelled and surrendered the notes.

As I stated awhile ago, in reference to the negotiations with Bradbury about those notes, the transaction was principally between Mr. Thomas and Mr. Bradbury, but it was with the consent of the Banking department that we permitted them to do that. I was a party to the deal in a general way. I didn't negotiate it myself. It was our business, because at the time the negotiations was being carried on it was an asset of the State Bank; and the bank was under our orders—we had charge of it.

Bradbury's stock that was down here was later returned to Mr. Thomas by Mr. Bradbury. It was then reissued—resubscribed and paid for. This money was paid it. It was reissued as new stock, and it was paid for in full. It was \$25,000. That was part of the stock that was here as collateral. I don't remember how much it was, the records will probably show.

I don't remember; occasionally I forget things.

I think it was more than \$10,000 worth of stock.

Q. And the result of these transactions, then, among you people up there, whether you were representing the state or whom you were representing, was that the stock that the First National Bank had was got out of its possession and up there, without any consideration, and this \$10,000 they are going to lose, too? That is your idea of banking business, is it?

A. Well, you are asking me for a conclusion about a proposition.

Q. Well you can say whether you consider that a proper way to do or not, or you can decline to answer it if you want to.

A. That is a proposition that might have several interpretations. You might say, on the other hand, that it would not be just for the depositors up there to lose this \$10,000. As a matter of fact, they lost \$25,000 or \$30,000.

Q. But you don't want to answer that question?

A. No, I have no objection to answering it, but it was given in such a way that I didn't just exactly get your meaning. If the stenographer will kindly read it, I will try to answer.

(Question read.)

A. It was not got out of their possession. They gave it up voluntarily. The stock had no value.

It got value when the people put in \$25000 on the reorganization. It was reissued up there. They made the value when they put in the \$25,000. If it hadn't

been got from here, we couldn't have reissued it. It was simply a short cut to the reorganization, the reason we desired the stock.

#### Redirect Examination.

Mr. Thomas was in a way representative of the depositors. There were several of the depositors that were trying to evolve some plan in connection with the bank department. We were helping them to reorganize the bank, and Mr. Thomas was the prime mover among the depositors to reorganize the bank.

He was a trustee, handles this stock as a trustee for the different parties interested in the reorganization.

That is, it was to be done through him, and the check was made to Mr. Thomas as a trustee when the stock was turned over to him.

#### Examination by the Court.

We used this stock for the purpose of reorganization. It was simply a short cut to reorganization.

We did not desire to get it clear of the credit which Mr. Bradbury held against the bank of \$10,000—it was a liability of the bank to Mr. Bradbury of a \$10,000 deposit.

Q. Well that was a credit in favor of Mr. Bradbury against the bank?

A. In favor of Mr. Bradbury yes.

Q. You wanted to get clear of that \$10,000 credit of Bradbury's.

A. He wanted to release all these notes that we held, his father's and others.

Q. I am asking you now the question, you wanted to get clear—the reorganization body wanted to get clear of that credit, or the charge against the bank?

A. Well, there wasn't any particular reason as to why we would rather have gotten rid of that credit than any other, your Honor. We had a number of depositors with deposits.

Q. I know that is true, but that was one of your ideas?

A. No.

Q. That was along with getting hold of this stock for the purpose of reorganization, was it?

A. Well, I can hardly say that it was any idea of ours to get rid of the \$10,000. Of course, we wanted the \$10,000—we wanted it to help take care of losses that were there to be taken care of.

Q. After the bank had reorganized, it would have had to pay this \$10,000 if it was not cancelled?

A. Oh yes. If we had not handled the transaction this way, it would have stood on our books as a liability to Mr. Bradbury the same as the liability to any other depositor.

#### Redirect Examination.

Naturally, if we had kept that credit on the books in that way, and the bank had had to pay the \$10,000 to Mr. Bradbury as it would have done if this settlement had not been made, then on the other hand the bank would have had to enforce the liability of these notes, and the liability of Bradbury's father and these other stockholders whose names are mentioned on

these notes.

And Bradbury didn't want that done in connection with his father. He did pay the \$10,000 to the bank rather than have that done.

COURT: But the First National Bank had nothing to do with that reorganization?

A. No sir.

(Excused.)

MARTIN V. THOMAS, called as a witness on behalf of the plaintiff, testified as follows:

Direct Examination.

I am the Mr. Thomas that has been spoken of here. I am the Martin V. Thomas trustee that is named as the payee in this check of Mr. Bradbury's, this \$10,000 check.

I heard Mr. Bradbury's testimony.

I was a party to the negotiations leading up to the reorganization of the Kendrick State Bank. And also a party to the negotiations, the result of which was the giving of this check to Mr. Bradbury.

I did not hear Mr. Bradbury's testimony to the effect that he told me, or possibly the loan committee or others, that this \$10,000 that was to his credit in the Kendrick Bank was the property of the First National Bank of Portland and was not his money.

Q. Did you hear him testify to that here on the stand?

A. I heard him testify to that.

Mr. Bradbury never spoke of its being the money of the First National Bank. He called it his individ-

ual money, and his individual deposit in the Kendrick State Bank.

I heard him testify to the effect that he received nothing for the giving of that check?

He came to us,—he made more than one proposition to us. It was made quite awhile before it was taken up,—that he wanted to get that family paper. He called it the “family” paper,—these notes that is represented a note of on the back of that check; and he would give his personal deposit in the Kendrick State Bank, which was \$10,000 for those notes.

I cannot repeat what was said about a stockholder's liability that any of these note holders were responsible for. I don't remember how that talk went.

But it was agreeable to him to give the check for the release of these notes. What he termed the famaily notes, and especially his father. He wanted to get back his father's note. He dwelt on that more than anything else. His proposition was accepted. That is exactly what the check was given for.

I am the present president of the Kendrick Bank.

#### Cross Examination.

I was not a stockholder in the old bank. I was a depositor. I had a deposit of somewhere in the neighborhood of \$1400 when it closed. I had a straight deposit of one thousand and some dollars, and I had C. D.'s that I had bought for the balance.

Q. And when the bank examiner closed the thing, you depositors got together and elected a depositors'

committee?

A. Well, we got together and talked this thing up.

I won't tell right now how many of us were on that committee. I wouldn't state how many was on the first committee. We had two or three gatherings in regard to it, two or three meetings.

Q. Now, when you say Mr. Thomas, that Mr. Bradbury didn't state that that was the money of the First National Bank, you don't mean to say that he didn't state it to some of the members of the committee when you were not there, perhaps?

A. I don't know what he said when I was not there.

What I mean to say is that he didn't tell me. I had heard of the First National Bank account. I heard of it as soon as the bank was closed, or within a day or two. I didn't know anything about the details of it.

Q. And when you first became a member of that committee, you immediately found out, didn't you, that Bradbury had \$10000 to his credit in the bank?

A. No sir I did not. Oh, the bank up there?

Q. Yes, that is the first thing you would find out wasn't it?

A. Yes, I found out that he had that up there, yes.

Q. And how long after that was the reorganization effected? How long was that bank closed up?

A. Just exactly two months.

I won't say how long after the bank closed that this

check was given. I don't remember. I had the check, though, in my possession there, I presume I would consider it in my possession, quite a little while before the bank was opened up. I don't remember what the date was. I cannot remember now. I haven't noticed the check.

The notes were not turned over right away to Mr. Bradbury. I won't say now why they were not.

He bought them. One reason they wasn't turned over was this: The bank examiner forbid it at the present time that we opened up. He said to hold them notes awhile. The bank commissioner, probably it would be proper—Mr. Platt. He told me that. They were held till sometime this spring, I guess.

I do not know the exact date this suit was brought.

Defendant's COUNSEL: What is the date of the filing of the complaint?

Plaintiff's COUNSEL: Filed January 9, 1913.

I don't think the notes had been delivered up to Mr. Bradbury then. It is not a fact that they had not been delivered up to two weeks ago. They were delivered longer than two weeks ago, I think. I don't know who delivered them; I wasn't there, I guess the cashier did.

I am the president.

My attention was not called to the matter just at that time. I was away when they were turned over, and I won't say exactly what date it was.

The bank examiner did not tell me to turn them over; this bank examiner that I am speaking of now

is out of office long ago. Quite awhile ago, ever since last election.

After we reorganized the bank and issued new stock, and it was paid up in full, these notes were not carried on the books at all. They were just laying there in the vault. We weren't doing anything at all with them. The reason we didn't deliver them to Bradbury at the start was that the bank examiner told us not to. After that I wasn't asked for them any more. In fact, I didn't know for a long while where Mr. Bradbury was. Mr. Bradbury asked us for them when we did deliver them. He didn't come there, but he wrote. He wanted his notes. I won't say when he wrote that letter. I think there is such a letter at the bank. I don't say positively that I saw it myself, but I think the cashier told me there was such a letter same.

#### Redirect Examination.

I heard Mr. Eastwood's testimony to the effect that he, as receiver of the bank, canceled on the books of the bank these notes before the books were turned over to the reorganized bank.

Q. Do you know whether or not that is a fact, of your own knowledge?

A. Well, I know that the notes were never in our bank that we considered any value.

They were charged off. I saw Mr. Eastwood charge them off myself. About the time of giving this check, in reorganizing the bank.

In answer to several questions I have said "I won't

say," I mean I didn't remember and that I can't say.

(Excused.)

Plaintiff's counsel offered in evidence plaintiff's exhibits 5, 6, 7 & 8 respectively, consisting of certified copies of reports made by the Kendrick State Bank to the state bank commissioner of Idaho during the time of the existence of the obligation sued upon in this action, said offer being for the purpose of impeaching the testimony of Bradbury.

Defendant's counsel objected to said exhibits as incompetent and immaterial. Objection overruled and plaintiff duly excepted. Said exhibits are hereto attached and made a part hereof.

Plaintiff rested.

Thereupon the court took a recess until the following morning at ten A. M. Upon court convening on the following morning June 24, 1913, plaintiff's counsel requested permission to have the case opened to introduce in evidence the minute book of the Kendrick State Bank.

Defendant's counsel objected to opening the case for such purpose on the ground that such evidence was immaterial and also because the case had been closed.

The COURT: The Court is inclined to allow them to introduce the record.

To which ruling defendant excepted.

GLEN S. PORTER, sworn on behalf of the plaintiff, testified as follows:

I live in Kendrick, Idaho and am the cashier of the

Kendrick State Bank and have been since April 9, 1912. As such cashier I have the custody of the books and records of that bank. This book marked plaintiff's exhibit 9 is one of the records of the bank in my custody. It is the minute book of the bank containing the record of all meetings held by the directors and stockholders of the Kendrick State Bank from May 24, 1899 up until the date of the reorganization. At the time of the reorganization this book was turned over to me by Mr. Bradbury with all the rest of the papers as being one of the records of the bank prior to its reorganization.

Plaintiff's exhibit 9 offered in evidence by plaintiff's counsel.

Defendant's counsel objected to the same as incompetent and immaterial and because it was an extraordinary offer to offer a whole book.

The COURT: Why do you introduce the whole book without pointing out some matters that might interest the court?

Plaintiff's COUNSEL: For the purpose of showing that there was no action taken by the board of directors with reference to this loan. The only way that we could do that is to introduce the minutes of all their meetings covering this period. Now, if counsel wishes, we will limit our offer to that portion of the book covering the period from June, 1910, up to January, 1912. We are willing to do that; but the contents of this book are very short. I can ask this witness the question—this witness has read these rec-

ords over repeatedly, and knows what they contain. Now, the book is offered, not only for the purpose of showing that there was no action taken by the board of directors authorizing or ratifying this loan, but also for the purpose of showing that when the bank did borrow money from banks, the board of directors did pass resolutions to that effect, and directly authorized the loans to be made. And the Supreme Court has held that that is a vital element in the case. We overlooked this last night in closing. We intended all the way through to put this book in, and that part of it, I understand, is discretionary with the court, to permit that to be done after the case is closed, when no one has been harmed by it.

By the COURT: The objection is overruled. Defendant's counsel duly excepted to such ruling.

Plaintiff's COUNSEL: In conformity with the suggestion of the court we limit our offer to the contents of the book contained on pages 57 to 75 inclusive, which covers the period from June 1, 1910 to January 17, 1912, the period in question. We also offer the meeting of the board of directors contained on page 46 bearing date July 6, 1909, for the purpose of showing that the board of directors authorized a loan to be made from the Commercial National Bank of Chicago.

Said plaintiff's exhibit 9 was by written stipulation of the parties withdrawn from the record to be returned to the State Bank of Kendrick Idaho, and a copy of said exhibit was by stipulation filed in place

of the original, such copy is hereto annexed marked exhibit 9 and made a part hereof.

Plaintiff rested.

Case closed.

Thereupon the case was argued by counsel and thereafter the court made and filed findings in favor of the defendant and against the plaintiff, upon which judgment was entered.

Thereafter and within due time the plaintiff moved for a new trial upon the following grounds:

I.

That the decision and findings of the court were contrary to the law and evidence.

II.

That the court erred in admitting evidence offered on behalf of the defendant contrary to the objection of the plaintiff, and especially in admitting in evidence the note signed by J. W. Bradbury as being evidence of the indebtedness claimed by defendant to be due from the plaintiff.

III.

In excluding evidence offered by plaintiff and objected to by defendant, contrary to exceptions taken by plaintiff.

IV.

In holding that there was evidence to show that the plaintiff bank had received the benefit of the \$10,000 borrowed by Bradbury from defendant bank.

V.

In finding that the plaintiff was not entitled to re-

cover in this case, and that the defendant was entitled to recover the amount claimed in defendant's counterclaim.

Plaintiff's motion for a new trial was denied and plaintiff duly excepted to such ruling.

IT IS HEREBY STIPULATED that the foregoing contains a true and correct statement of all the proceedings had upon the trial of this action and that the same contains all the evidence, testimony and exhibits offered and received upon such trial, together with the objections, exceptions and rulings thereon, and that the foregoing may be settled and signed by the Judge of this Court as a true and correct Bill of Exceptions herein without further notice, and that the same shall be certified to contain all the evidence and proceedings had upon the trial.

STAPLETON & SLEIGHT & C. L. McDONALD,  
Plaintiff's Attys.

DOLPH, MALLORY, SIMON & GEARIN,  
Defendant's Attys.

I, Chas. E. Wolverton, judge before whom the above entitled action was tried, hereby certify that the foregoing is a true and correct Bill of Exceptions containing all the evidence, testimony, rulings and exceptions introduced or had upon the trial of this action and upon the foregoing stipulation the same is hereby settled as a true and correct Bill of Exceptions and certified to contain all the evidence, exhibits, testimony and proceedings had upon said trial.

CHAS. E. WOLVERTON,  
Judge.

[Endorsed]: Bill of Exceptions. Filed Sep. 10,  
1913.

A. M. CANNON,  
Clerk U. S. District Court.

And afterwards, to wit, on the 7th day of October, 1913, there was duly filed in said Court, a Petition for Writ of Error, in words and figures as follows, to wit:

**[Petition for Writ of Error.]**

*In the District Court of the United States for the  
District of Oregon.*

KENDRICK STATE BANK, a corporation,  
Plaintiff,

v.

FIRST NATIONAL BANK OF PORTLAND, a corporation,  
Defendant.

Now comes the above named plaintiff and says that on or about the 4th day of August, 1913, this court entered a judgment herein in favor of the defendant and against the plaintiff, in which judgment and the proceedings had prior thereto in this cause, certain errors were committed to the prejudice of the plaintiff, all of which will more fully appear upon the assignment of errors filed with this petition.

WHEREFORE the plaintiff prays that a writ of error may issue in its behalf out of the United States Circuit Court of Appeals for the Ninth Circuit, for the correction of the errors so complained of and

that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the clerk of said United States Circuit Court of Appeals.

STAPLETON & SLEIGHT,  
& C. L. McDONALD,  
Attorneys for Plaintiff.

[Endorsed]: Petition for Writ of Error. Filed Oct. 7, 1913.

A. M. CANNON,  
Clerk U. S. District Court.

And afterwards, to wit, on the 7th day of October, 1913, there was duly filed in said Court, an Assignments of Error, in words and figures as follows, to wit:

**[Assignments of Error.]**

*In the District Court of the United States for the  
District of Oregon.*

KENDRICK STATE BANK, a corporation,  
Plaintiff,

vs.

FIRST NATIONAL BANK OF PORTLAND, a corporation,

Defendant.

The plaintiff in the above entitled action, in connection with its petition for writ of error, makes the following assignment of errors which it avers occurred on the trial of said cause, to-wit:

## I.

That the decision and findings of the court were contrary to the law and the evidence.

## II.

That the court erred in admitting evidence offered on behalf of the defendant, contrary to the objection of the plaintiff, and especially in admitting in evidence the note signed by J. W. Bradbury as constituting evidence of the indebtedness claimed by defendant to be due to it from the plaintiff.

## III.

That the court erred in excluding evidence offered by plaintiff and objected to by the defendant.

## IV.

That the court erred in holding that there was evidence thereof that the plaintiff bank had received the benefit of the \$10,000 borrowed by Bradbury from the defendant bank.

## V.

That the court erred in finding that the plaintiff was not entitled to recover in this case and that the defendant was entitled to recover the amount claimed in defendant's counterclaim.

STAPLETON & SLEIGHT &  
C. L. McDONALD,

Plaintiff's Attys.

[Endorsed]: Assignment of Errors. Filed Oct. 7, 1913.

A. M. CANNON,  
Clerk U. S. District Court.

And afterwards, to wit, on the 8th day of October, 1913, there was duly filed in said Court, an Order Allowing Writ of Error, in words and figures as follows, to wit:

[Order Allowing Writ of Error.]

*In the District Court of the United States for the  
District of Oregon.*

KENDRICK STATE BANK, a corporation,  
Plaintiff,

v.

FIRST NATIONAL BANK OF PORTLAND, a  
corporation,  
Defendant.

Upon the 8th day of Oct. 1913 came the above named plaintiff, by its attorneys, C. L. McDonald and Stapleton & Sleight and filed herein an order presenting to this court its petition praying for the allowance of a writ of error. Also for an assignment of errors intended to be urged by the plaintiff, praying also that a transcript of the record of the proceedings and papers upon which the judgment herein was returned duly authenticated may be sent to the United States Court of Appeals for the Ninth Circuit and that such other and further proceedings may be had as are right and proper.

In consideration whereof, upon the plaintiff giving a bond according to law in the sum of \$2500., which

shall operate as a supersedeas bond, the court does allow the writ of error.

R. S. BEAN,  
Judge.

[Endorsed]: Order allowing Writ of Error. Filed Oct. 8, 1913.

A. M. CANNON,  
Clerk U. S. District Court.

And afterwards, to wit, on the 9th day of October, 1913, there was duly filed in said Court, a Bond on Writ of Error, in words and figures as follows, to wit:

[Bond on Writ of Error.]

*In the District Court of the United States for the  
District of Oregon.*

KENDRICK STATE BANK, a corporation,  
Plaintiff,

v.

FIRST NATIONAL BANK OF PORTLAND, a corporation.

Defendant.

KNOW ALL MEN BY THESE PRESENTS  
that we, Kendrick State Bank,, a corporation, plaintiff, of Idaho, as principal, and United States Fidelity & Guaranty Company, a corporation, of Baltimore, Maryland, as surety, are held and firmly bound unto the First National Bank of Portland, Oregon, in the full and just sum of \$2500 to be paid to the First National Bank of Portland, its successors or assigns, to

which payment well and truly to be made we bind ourselves, our successors and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 6th day of Oct., 1913.

WHEREAS lately at the regular term of the District Court of the United States for the District of Oregon, in an action pending in said court between the Kendrick State Bank a corporation as plaintiff and the First National Bank of Portland, a corporation as defendant, a judgment was rendered against said plaintiff, and the defendant has obtained a writ of error from the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment in the aforesaid action, and a citation directed to the said First National Bank of Portland, citing and admonishing it to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, California, thirty days from and after the date of said citation.

NOW the condition of the above obligation is such that if the said Kendrick State Bank shall prosecute said writ of error to effect and answer all damages and costs if it fails to make good its plea, then the above obligation to be void; otherwise to remain in full force and virtue.

KENDRICK STATE BANK,  
By G. S. Porter, Cashier.

(Bank Seal)

U. S. FIDELITY & GUARANTY CO.,  
By J. C. Hartman,  
Its Attorney in Fact.  
(Seal)

In the presence of:

WALTER M. THOMAS.  
CORA OSMUND.

The foregoing bond is approved both as to form  
and surety.

R. S. BEAN,  
Judge.

[Endorsed]: Bond on Appeal. Filed Oct. 9th,  
1913.

A. M. CANNON,  
Clerk U. S. District Court.

And afterwards, to wit, on the 9th day of October,  
1913, there was duly filed in said Court, a Writ of  
Error, in words and figures as follows, to wit:

**[Writ of Error.]**

*In the United States Circuit Court of Appeals  
for the Ninth District.*

KENDRICK STATE BANK, a corporation,  
Plaintiff in Error,  
vs.

FIRST NATIONAL BANK, a corporation,  
Defendant in Error.

THE UNITED STATES OF AMERICA,—ss.  
THE PRESIDENT OF THE UNITED STATES  
OF AMERICA.

To the Judge of the District Court of the United States for the District of Oregon: Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the District Court before the Honorable CHAS. E. WOLVERTON, one of you, between Kendrick State Bank, Plaintiff and Plaintiff in Error, and First National Bank of Portland, Defendant and Defendant in Error, a manifest error hath happened to the great damage of the said Plaintiff in Error, as by complaint doth appaer; and we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, and, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, California, within thirty days from the date hereof, in said Circuit Court of Appeals to be then and there held; that the record and proceedings aforesaid, being then and there inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States of America should be done.

Witness the Honorable EDWARD DOUGLAS WHITE,

Chief Justice of the Supreme Court of the

United States this 9th day of October, 1913.

A. M. CANNON,

Clerk of the District Court of the United  
States for the District of Oregon. <sup>9th</sup>

[Endorsed]: Writ of Error. Filed Oct. 9, 1913.<sup>210</sup>

A. M. CANNON,

Clerk.

And afterwards, to wit, on the 10th day of October, 1913, there was duly filed in said Court, a Citation on Writ of Error, in words and figures as follows, to wit:

**[Citation on Writ of Error.]**

UNITED STATES OF AMERICA,

District of Oregon.—ss.

To the First National Bank of Portland, a corporation, Greeting:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the District of Oregon, wherein Kendrick State Bank, a corporation, plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said District,

this 9th day of October in the year of our Lord, one thousand, nine hundred and thirteen.

R. S. BEAN,  
Judge.

[Endorsed]: Citation on Writ of Error. Filed October 10, 1913.

A. M. CANNON,  
Clerk.

And afterwards, to wit, on Saturday, the 8th day of November, 1913, the same being the 6th Judicial day of the Regular November Term of said Court; Present: the Honorable CHAS. E. WOLVERTON, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

**[Order Enlarging Time to File Transcript.]**

*In the District Court of the United States for the  
District of Oregon.*

No. 5877

November 8, 1913.

KENDRICK STATE BANK,

Plaintiff,

v.

FIRST NATIONAL BANK,

Defendant.

Now, at this day, for good cause shown, it is Ordered that plaintiff's time for filing the record and docketing the above entitled cause on the appeal, in

the United States Circuit Court of Appeals for the Ninth Circuit, be and the same hereby is extended thirty days from the date hereof.

CHAS. E. WOLVERTON,  
Judge.

And afterwards, to wit, on Monday, the 10 day of November, 1913, the same being the 7th Judicial day of the Regular November Term of said Court; Present: the Honorable CHAS. E. WOLVERTON, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

[**Order Certifying Up Exhibits.**]

*In the District Court of the United States for the  
District of Oregon.*

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No. 5877

November 10-1913.

KENDRICK STATE BANK, a Corporation,  
Plaintiff,  
vs.  
FIRST NATIONAL BANK OF PORTLAND, a  
corporation,  
Defendant.

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It appearing that certain exhibits introduced in evidence on the trial of this cause are of such nature as to require inspection by the appellate court on the appeal herein;

It is ordered that plaintiff's exhibits 5, 6, 7, and 8 be

certified up by the clerk with the record on appeal to the United States Circuit Court of Appeals, Ninth Circuit.

CHAS. E. WOLVERTON.

2

IN THE

# United States Circuit Court of Appeals

## NINTH CIRCUIT

KENDRICK STATE BANK,  
a Corporation,

Plaintiff in Error.

vs.

FIRST NATIONAL BANK OF PORT-  
LAND, a Corporation,

Defendant in Error.

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### BRIEF OF PLAINTIFF IN ERROR

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#### STATEMENT.

This action was brought by the plaintiff to recover a balance of \$8283.09 claimed to be money of the plaintiff on deposit with the defendant which defendant refused to repay upon demand.

The undisputed evidence shows that on June 11, 1910, the plaintiff sent a letter to defendant stating that plaintiff's cashier had arranged with defendant for a loan of \$5000.00 to be made by defendant

to plaintiff to be evidenced by plaintiff's certificate of deposit and to be secured by collateral notes, which notes were enclosed in such letter.

On June 13, 1910, the defendant addressed a letter to the plaintiff stating that it had credited plaintiff's account for \$5000.00 upon such certificate of deposit and was returning the collateral notes to be endorsed by the plaintiff.

On June 16, 1910, the plaintiff, in a letter signed by Bradbury as president, returned the collateral notes to the defendant bank duly endorsed.

On September 6, 1910, the plaintiff in a letter signed by its cashier requested an extension of time on such loan, which was given.

On December 6, 1910, J. W. Bradbury, president of plaintiff, wrote to the cashier of the defendant bank requesting that the loan of \$5000.00 evidenced by the certificate of deposit be changed in form and that the defendant bank accept the personal note of J. W. Bradbury in place of the certificate of deposit, and stated that the reason for the request was that the Kendrick Bank did not desire to publish a report that it was borrowing from the First National Bank of Portland.

On December 7, 1910, the cashier of defendant bank wrote the plaintiff that it would accept the

note of J. W. Bradbury in place of the certificate of deposit and would accept his stock in the Kendrick bank as collateral thereto.

On December 13, 1910, J. W. Bradbury forwarded forty shares of stock in the Kendrick State Bank to the defendant bank as collateral security for his said note.

On June 6, 1911, J. W. Bradbury individually wrote the defendant bank requesting an extension of time for the payment of his note, and on June 7, 1911, in a letter addressed to him personally, the cashier of defendant bank agreed to such request, and on June 10, 1911, Bradbury individually forwarded his renewal note for \$5000.00 to the defendant bank.

On September 22, 1911, Bradbury individually requested a further extension of time of said note, which was granted by letter of September 25, 1911, written by defendant's cashier to J. W. Bradbury individually.

The undisputed testimony shows that in December, 1911, Mr. Bradbury came to Portland and verbally arranged with Mr. Newkirk, the cashier of defendant, for an increase of such loan from \$5000.00 to \$10,000.00 to be evidenced by the individual note of Bradbury and secured by fifty addi-

tional shares of Bradbury's stock in the Kendrick State Bank.

On December 16, 1911, in pursuance of such arrangement, J. W. Bradbury individually wrote the cashier of defendant bank enclosing an additional certificate of stock of fifty shares in the Kendrick State Bank.

On December 18, 1911, defendant bank returned this certificate to Bradbury individually for his endorsement and on December 21, 1911, Bradbury individually wrote defendant returning such certificate duly endorsed.

Until the change in the form of such loan, all the letters on behalf of the plaintiff were signed by Bradbury as president (record, pages 43-49). After the change in form of the loan by the substitution of Bradbury's individual note in place of the certificate of deposit, all letters written by Bradbury were signed by him individually and not as president, and all letters addressed to him by defendant bank were addressed to him personally and not as president (record, pages 49-55).

The original loan of \$5000.00 was evidenced by plaintiff's certificate of deposit secured by five notes aggregating \$10,230.00 payable by individuals to the Kendrick State Bank and endorsed by that bank to the defendant bank. (Record, pages 43-45).

At the time of the change of the form of this loan, and upon the acceptance by defendant of the individual note of Bradbury in place of the certificates of deposit and of Bradbury's stock in the Kendrick State Bank in place of the collateral notes of the five individuals above mentioned, the certificate of deposit and the individual collateral notes were returned to the plaintiff bank and thereafter the defendant bank retained only the individual note of Bradbury and his stock in the Kendrick bank as collateral thereto. (Record, pages 66, 95.)

Mr. Newkirk, the defendant's cashier, admits that there was nothing whatever upon the books of defendant bank to show that the plaintiff bank was indebted to defendant bank in any sum whatever, after the change in the form of this loan was made, and he admits that the only basis for any claim that plaintiff bank was indebted to defendant bank consisted of an oral understanding between himself and Mr. Bradbury at the time the latter came to Portland in December, 1911, and arranged for the increase of the loan to himself from \$5000.00 to \$10,000.00. (Record, page 66.)

The \$10,000.00 obtained by Bradbury from defendant bank was deposited by him in the Kendrick State Bank to his own personal credit. (Record, page 96.)

Thereafter the Kendrick bank failed and was

taken possession of by the Idaho Bank Commissioner under the laws of Idaho. In a few months it was reorganized by new capitalists and has since been doing business in the ordinary course. The \$10,000.00 was paid by Bradbury, by his personal check, to the Idaho Bank Commissioner to cancel an indebtedness of more than that amount which was due from his father and relatives and friends to the Kendrick bank upon notes given by them substantially in payment of subscriptions for stock in the bank, and in this way the \$10,000.00 was applied by Bradbury to his own personal use. (Record, pages 89-84; 100, 106, 108-114.)

The change in the form of the loan from a loan to the Kendrick bank into a personal loan to Bradbury was made with the intention of deceiving the depositors of the Kendrick bank (record, page 96); and defendant's cashier, who made the loan and consented to the change, testifies that the defendant bank knew of such purpose and intended to aid Bradbury in carrying it out. (Record, page 60.)

## **ASSIGNMENTS OF ERRORS.**

### **I.**

That the decision and findings of the court were contrary to the law and the evidence.

## II.

That the court erred in admitting evidence offered on behalf of the defendant, contrary to the objection of the plaintiff, and especially in admitting in evidence the note signed by J. W. Bradbury as constituting evidence of the indebtedness claimed by defendant to be due to it from the plaintiff.

## III.

That the court erred in excluding evidence offered by plaintiff and objected to by the defendant.

## IV.

That the court erred in holding that there was evidence that the plaintiff bank had received the benefit of the \$10,000.00 borrowed by Bradbury from the defendant bank.

## V.

That the court erred in finding that the plaintiff was not entitled to recover in this case and that the defendant was entitled to recover the amount claimed in defendant's counterclaim.

**ARGUMENT.****I.**

In this case the indebtedness of defendant to plaintiff in the sum of \$8283.09 for the amount appearing upon defendant's books to the credit of plaintiff is conceded by defendant, unless the defendant is able to establish its offset or counter-claim, consisting of the alleged indebtedness by the plaintiff to the defendant for the loan evidenced by Bradbury's note. The question therefore arises whether under the law the defendant can be permitted to sustain an action against the plaintiff bank upon the individual note of Bradbury.

When a negotiable promissory note is made by an agent in his own name and does not disclose upon its face the name of the principal, no action lies against the principal.

Cragin vs. Lovell, 109 U. S. 194.

If an agent at the time of the making of a contract discloses the name of his principal, and the contract is then made with the agent alone, the person making the contract cannot maintain an action upon it against the principal.

Silver vs. Jordan, 136 Mass. 319.

When a party knows the principal but chooses to take the contract of the agent, he is bound by his election and cannot hold the principal.

Landers vs. Foster, Wash. 76; Pac. 274.

Shuey vs. Adair, 63 Amer.; S. R. 879.

A maker of a note with nothing on its face to disclose that he is an agent cannot introduce parol evidence to exonerate himself by showing that he only acted as agent under an agreement that the principal should be bound.

Shuey vs. Adair, 63 Amer.; S. R. 879.

When one obtains money from a bank and gives his individual note, and pledges as collateral security for the payment of said note stock owned by him in a corporation, the debt represented by the note is his individual debt and cannot be enforced against the corporation of which he is the president, and this rule is not affected by recitals in the petition that the money so obtained was for the use of the corporation and was so understood at the time and that the money was placed to the credit of the corporation on the books of the bank.

Andrews Co. vs. Nat. Bank of Columbus,  
Georgia 58 S. E. Reporter 633.

Under the foregoing authorities, it is plain that the parol evidence introduced in this action whereby the defendant sought to show that while it accepted the individual note of Bradbury the indebtedness represented by such note was nevertheless the indebtedness of the plaintiff and not of Bradbury was inadmissible, and should not be considered in arriving at a conclusion in the case. In other words, even though that was the understanding between Bradbury and defendant's cashier, it constitutes no reason for enforcement of the debt against plaintiff when the defendant voluntarily accepted Bradbury's individual note for the debt. The acceptance of such note constituted an election on the part of the defendant to make Bradbury its debtor in place of plaintiff, and the defendant is bound by such election. This appears plain when it is remembered that the answer of defendant expressly bases its right of recovery upon such note, for it is alleged in the answer as follows: "And to evidence said loan plaintiff delivered to defendant the promissory note of J. W. Bradbury, the then president of the plaintiff," and on the same page the defendant further alleges in its answer in reference to the increase from \$5000.00 to \$10,000.00 as follows: "To evidence which loan the plaintiff delivered the note of J. W. Bradbury then president of the defendant and its agent and representative." (Record, page 5.)

These allegations, taken in connection with the

undisputed testimony above referred to, conclusively establish the fact that defendant accepted the individual note of Bradbury as the agent of the plaintiff with knowledge of the fact that he was acting as such agent. This being the case the rules above mentioned apply, and the defendant is estopped from asserting its claim against plaintiff, it having accepted the individual note of the agent.

## II.

The plaintiff also contends that there can be no recovery by defendant in this case in any event, for the reason that if the loan was made to the plaintiff bank and not to Bradbury individually it was not made by authority or with the knowledge of the board of directors of the plaintiff, nor was it ever ratified or confirmed by them, and it has not been shown by the defendant that the plaintiff received the benefit or proceeds of the loan. Under these circumstances the case is ruled by the following decision:

Western National Bank vs. Armstrong, 152  
U. S. 349.

The last mentioned decision should be compared with the following case:

Aldrich vs. Chemical Nat. Bank, 176 U. S.  
618.

In the former case no authority for making the loan existed and the bank did not receive the proceeds, and it was held that recovery could not be had from it. In the latter case no authority for making the loan existed but it was shown that the bank received the proceeds and it was held that it was estopped from denying the right of recovery under these circumstances.

In the present action the undisputed evidence plainly shows that the Kendrick State Bank never got the benefit of the \$10,000.00 in question because the money was deposited by Bradbury to his individual account in the Kendrick bank and was used by him in paying the individual notes of himself and his father and others, which notes it plainly appears were given in payment of subscriptions to stock in the Kendrick bank. Whether the notes were given for stock subscriptions or not, it conclusively appears that they were liabilities on the part of Bradbury and his relatives and that he was extremely anxious to wipe out such liabilities and that he used this money to extinguish those claims. (Record, pages 89-94, 100, 106, 108, 114.)

It is contended by the defendant that Bradbury informed the committee who were reorganizing plaintiff bank, before he paid the \$10,000.00 to take up these notes, that this money belonged to the Portland bank. This testimony, however, is ex-

pressly denied by the chairman of the committee and is contradicted by Eastwood, the Bank Commissioner; but even if Bradbury did make such statement it could not change the result but it would merely show that he was more amenable to the interests of himself and his father than to those of the Portland bank, and that when they came in conflict he sacrificed the latter to the former. His conduct in this respect could not in any way affect or waive the rights of plaintiff bank.

Upon the whole case it is therefore respectfully submitted that the plaintiff should have judgment for the amount claimed.

STAPLETON & SLEIGHT and  
C. L. McDONALD,  
Attorneys for Plaintiff in Error.







No. 2347.

3

In the United States Circuit  
Court of Appeals  
FOR THE NINTH CIRCUIT

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Kendrick State Bank, a corporation,

Appellant,

vs.

First National Bank of Portland, a corporation,

Appellee.

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Writ of Error to the District Court of the  
United States, for the District of Oregon.

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RESPONDENT'S BRIEF.

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STATEMENT OF CASE.

The record discloses that for a number of years prior to February 8, 1912, the Kendrick State Bank, of Kendrick, Idaho, was a correspondent of the First National Bank of Portland, using the latter as a reserve agent and from time to time receiving such accommodation from it as the former Bank required.

On June 10, 1910, the Portland Bank loaned the Kendrick Bank \$5,000.00, to evidence which the Kendrick Bank issued its C-D to the Portland Bank. The money so loaned was deposited with the Portland Bank to the credit of the Kendrick Bank, subject to its checks or drafts, and the balance remaining undrawn at the maturity of the loan to be applied in payments thereof. This loan at the request of the Kendrick State Bank was renewed from time to time, and on December 11, 1911, was increased to \$10,000.00.

About six months after the loan was originally made and also at the time the loan was increased to \$10,000.00, the Kendrick Bank through its President, and for reasons appearing in the letter of J. W. Bradbury, President of the Kendrick Bank, to J. W. Newkirk, Cashier of the Portland Bank, dated December 6th, 1910, which appears on page — of this Brief, requested the Portland Bank to evidence the loan or loans made to the Kendrick Bank by taking the note of J. W. Bradbury, its President, in place of the Bank's C-D. This the Portland Bank agreed to do, and because at the time of the commencement of this action it held no direct written obligation of the Kendrick Bank, it is now contended that there was a novation and that the Kendrick Bank was released from liability on account of the money loaned by the Portland Bank to the Kendrick Bank.

On February 8, 1912, the Kendrick Bank became

insolvent and passed into the control of the State Bank Commission of Idaho. Upon learning this the Portland Bank applied \$8,283.39 then on deposit with it to the credit of the Kendrick Bank (being the balance of money loaned by the Portland Bank) on account of the aforesaid loan.

Thereafter steps were taken to reorganize the Kendrick Bank and the parties in charge of such reorganization seek to recover from the Portland Bank the said sum of \$8,203.09 on deposit at the date of the insolvency of the Kendrick Bank, claiming that the debt was Bradbury's and not that of the Kendrick Bank.

The Portland Bank insists that in addition to the right to apply the balance on deposit to the debt of the Kendrick Bank it is also entitled to have judgment against the Kendrick Bank for the balance of the debt, with interest.

The entire transaction is still between the original parties. The two persons negotiating the loan and making the contract were J. W. Bradbury, President of the Kendrick Bank, and J. W. Newkirk, Cashier of the Portland Bank. We quote from their testimony so much as we deem material to a proper understanding of the arrangement entered into by the two Banks:

#### EVIDENCE.

J. W. Newkirk, Cashier of the Portland Bank:

I know Mr. Bradbury, President of the Kendrick State Bank. The Portland Bank for several years had been correspondent of the Kendrick Bank. I remember the circumstances of the first loan of \$5,000.00 made by Defendant to Plaintiff in June, 1910. (Identifies letter of J. W. Bradbury, President, dated June 11, 1910, requesting loan, and reply thereto.) Trans. of Rec., pp. 42, 43, 44.

This loan was extended from time to time. Under date of December 6, 1910, the Portland Bank received from the Kendrick Bank the two following letters:

Kendrick State Bank,  
Kendrick, Idaho, Dec. 6, 1910.

J. W. Newkirk, Cashier,  
First National Bank, Portland, Oregon.

Dear Sir: In reference to our C-D due Dec. 12th for \$5,000.00. Would it be possible for us to get an extension on this for six months? The collections with (us) are at a standstill and from the outlook I am of the opinion they will continue so until another crop is harvested.

We enclose our C-D for \$5,000.00 for the time asked for in case you can grant us the extension asked to replace the one you hold.

We are writing you on another sheet for this

to be carried in another way with our reasons for asking for the change.

Hoping you will grant us the favor of an extension and thanking you for your many kindnesses of the past, I am, very truly yours,

J. W. BRADBURY, President.

Kendrick State Bank,

Kendrick, Idaho, Dec. 6, 1910.

J. W. Newkirk, Cashier,

First National Bank, Portland, Oregon.

Dear Sir: I am sending herewith my personal note for \$5,000.00 with Kendrick Bank Stock for like amount attached for your consideration.

We would like to have you in case you can grant us the extension asked in letter regarding our C-D for \$5,000.00 due Dec. 12, 1910, to have you take this note and pass to our credit in place of the C-D.

The reason for this is, in our statements to the State Bank Commissioner which are published we now have to publish any Certificates of Deposit to other banks for borrowed money as such and in a farming community this always causes unfavorable comment and naturally hurts.

I feel sure our average Daily Balance as we have kept it for the past few months will be

kept as strong and we want this extension more to keep our reserve in as good shape as possible.

Hoping if you can carry us for the extension you will accept this method of loaning us this amount, and again thanking you for your great kindness of the past, I am,

Yours truly,

J. W. BRADBURY, President.

To these two letters Mr. Newkirk replied as follows:

December 7, 1910.

Kendrick State Bank,  
Kendrick, Idaho.

Gentlemen: Answering yours of the 6th inst., we will be pleased to make the extension referred to by you, and will accept the note in lieu of the certificates of deposit. We enclose herein for endorsement two certificates aggregating thirty shares of stock which you may return to us after procuring the required endorsement.

Yours very truly,

J. W. NEWKIRK, Cashier.

The witness Newkirk further testified:

I remember an interview between myself and Mr. J. W. Bradbury, president of the Kendrick State Bank, during the early part of December, 1911, when this loan was increased from \$5,000

to \$10,000. It took place at the First National Bank and Mr. Bradbury and myself were present. \* \* \* Oh, well, we simply agreed to take \$5,000 more in addition to what we had. We agreed to increase the loan to the Kendrick State Bank. *We absolutely were not loaning any money to Mr. Bradbury individually.* I do not know anything about Mr. Bradbury's personal responsibility and never did, as our dealings were entirely with the Kendrick State Bank. In December, 1911, the First National Bank loaned the Kendrick State Bank \$5,000 more. We took a note for \$10,000, and placed the money to the credit of the Kendrick State Bank. The First National Bank had from time to time collateral security as indicated by this correspondence in addition to the certificate of deposit and the note of Mr. Bradbury. \* \* \* The collateral has all been returned. (Trans., pp. 55-56.)

There never was any agreement between ourselves and any of the parties, either the Kendrick State Bank or Mr. Bradbury, that the First National Bank would release or did release the Kendrick State Bank from obligation on account of the moneys advanced by the First National Bank. We never agreed to take Bradbury individually for the money that the Kendrick State Bank got from the First National. (Trans., p. 57.)

I knew nothing about Mr. Bradbury's affairs, whether or not he was supposed to be perfectly solvent at that time. I didn't consider him at all. I accepted that note (Bradbury's) for the Kendrick State Bank. It is customary for banks to take the individual note of the president for a loan to the bank. It is done quite frequently. Our bank has done it frequently. (Trans., p. 61.)

Plaintiff's counsel called my attention to the time the loan was increased from \$5,000 to \$10,000 and asked about Mr. Bradbury requesting the increase. Mr. Bradbury came to us from and represented himself as acting for the Kendrick State Bank. Our transaction was with him as president and for account of the Kendrick State Bank. (Trans., pp. 67-68.)

J. W. Bradbury testified on behalf of the defendant:

I took over the Kendrick State Bank in December, 1904, and was elected president and remained president up to the time of its suspension.

The First National Bank of Portland had been our correspondent, and on June 11, 1910, I simply wrote to the First National Bank of Portland, telling them that I needed to make a loan of \$5,000. \* \* \* The money was deposited down here to the credit of the Kendrick

State Bank and checked against by the Kendrick State Bank and the Kendrick State Bank also deposited at times and kept an open balance there. When that loan was matured, it was continued. \* \* \* You read that portion of the letter to me, which has been introduced in evidence: "We are writing you on another sheet for this to be carried in another way with our reasons for asking for the change." I recall writing that. \* \* \* I think the body of that letter covers it. I simply wrote and told them my reasons for changing the form of loan, and asked them might I have that kind of accommodation. And they agreed to it. *It was never, at that time or any time, agreed between the First National Bank and myself that the account against the Kendrick State Bank should be released. There never was any such agreement as that.*

Q. These transactions that I have called your attention to took place in 1910. Now in December, 1911, this account was increased from \$5,000 to \$10,000. Do you remember that occurrence?

A. Yes, sir; I needed an extra accommodation of \$5,000 and I made a trip down here especially to see Mr. Mills or Mr. Newkirk, of the First National Bank. I told them the situation I was in; I wanted to borrow the money and

make the loan for \$10,000, make an increase of \$5,000 over the original loan. When I say "I," I mean myself as president of the Kendrick State Bank. I made the trip and I made the arrangements with the First National Bank to borrow the money. That increased sum, the extra \$5,000, was borrowed for the bank. At the time I made that arrangement with Mr. Newkirk or Mr. Mills, or whoever represented the First National Bank, it was not agreed between us that the account against the Kendrick bank should be released at all. (Trans., pp. 84-5.)

At that time I gave a note to the First National Bank and the money was deposited in the First National Bank to the credit of the Kendrick State Bank and was utilized by the bank in checking against it. As president of the bank, I knew it was there. \* \* \*

I did not have any arrangement with the First National Bank individually. Not at all at any time. (Trans., p. 86.)

The Kendrick State Bank paid the interest on these notes from time to time as it fell due.  
\* \* \*

Q. There has been some testimony introduced here with reference to certain stock of the Kendrick State Bank owned by you, and depos-

ited by you with the First National Bank. Tell the court what became of that stock.

A. The First National Bank of Portland returned it to me, and I turned it over to Mr. Martin V. Thomas, now president of the Kendrick State Bank. He is now president of the Kendrick State Bank. \* \* \*

At the time the Kendrick State Bank closed there was a credit due me of something over \$10,000, ten thousand one hundred and something, I believe, if I remember rightly. When it closed and these people were in process of settling it up and reorganizing it, and negotiations were going on between us, I told those people whose money that was. \* \* \* I told them that the money did not belong to me, that it was the First National Bank of Portland's money. I told them on two different times that I know of, one time when the committee waited on me at my home, and another time when I was up in the Kendrick State Bank's office. (Trans., pp. 87-8.)

As a part of that conversation and the transaction that occurred there I signed a check in favor of Mr. Thomas for the \$10,000, checking out to them all the money that was in the bank in my name. This check was signed in the Kendrick State Bank office, at the second in-

terview. At the time I signed the check I had told them twice whose money it was.

I didn't get anything for that check that I signed to them. I didn't turn over the stock at that time. They had part of the stock in the bank. This Portland stock was some time later getting up there. I turned it over later on. There was nothing else turned over to them. I didn't have anything else. So then the situation was that they took all I had, bank stock and everything, and the money that stood to my credit in the bank.

Q. And now the claim is that this is your debt to the First National Bank, is that it?

A. I don't know what they think about it. (Trans., pp. 84 to 89.)

At that time this committee wanted me to turn over this \$10,000 to them and I objected, and told them the money was not mine. I was acting under the advice of my attorney from Moscow, Mr. Morgan, and he advised me to give them the check for it, for he said, "It don't make any difference, anyhow. They will grab this money. It don't make any difference. If they can't get it on this stock transaction or your check, they will simply assess it out of you on the stock, so you might as well give them the check and let it go at that, and make the endorsement on the check." (Trans., p. 93.)

At the time I gave my first note the facts leading up to that transaction are substantially as they are set forth in the communication from me to the First National Bank, that is in evidence here, and that was referred to by counsel in his examination of me. In fact, I had no personal communication with them at that time. It is all contained in that letter. \* \* \*

I considered this note of mine an obligation of the Kendrick State Bank, and I always considered that that was a liability of the Kendrick bank. (Trans., pp. 94-95.)

Referring to the loans made by the First National Bank of Portland to the Kendrick State Bank, the witness Bradbury further testified: "*I instructed them to at any time charge the account of the Kendrick State Bank with them with the note.*" (Trans., p. 97.)

I owned \$23,000 of stock in that bank (Kendrick Bank). I practically owned it all, except some organization shares. The capital stock was \$25,000. The other was owned by relatives of mine, so that I was practically the bank.  
\* \* \*

One of the accounts that was carried by the bank at that time was an account called "Bad Debts" that amounted to something over \$26,000. I carried that along as long as I could and absorbed what little profits I made until the

state appointed a state bank examiner. Then I had to charge those off, those accounts, together with other bad debts; and in order to make that up I gave my notes and my people's notes to the amount of \$25,000 to do that; and these are the notes that have been carried along. \* \* \*

Referring to the money loaned by the Portland bank, witness stated:

I supposed that Mr. Newkirk knew that this money was credited to my account up there in the Kendrick bank, just from the natural procedure of business.

#### POINTS AND AUTHORITIES.

A loan of money to a corporation will render it liable for the debt, although the note of individuals, instead of the note of the corporation, was taken therefor, because it was supposed to be better security. *The test is whether the note was received as a consideration for the money or only as a security.*

*Third National Bank v. Van Haagen Mfg. Co., 12 L. R. A. 223; (s. c., 141 Pa. St. 214, 21 Atl. 598).*

*Merchants Bank v. Central Bank, 44 Am. Dec. 665.*

While deposits are ordinarily transferable by check or draft, they may be transferred by parol.

3 Am. & Eng. Encyl. Law (2 ed.), p. 830.

*McEwan v. Davis*, 39 Ind. 109.

*Neff v. Green Co. Bank*, 89 Mo. 581.

*Armour v. First Natl.*, 11 South. 28.

A bank deposit is subject to any arrangement which the depositor and the bank may make concerning it. It is therefore clear that the direction of Bradbury to apply the money on deposit with the Portland bank to the payment of the loan fully justified the Portland bank in making the application.

*Harrison v. Harrison*, 118 Ind. 179; (4 L. R. A. 111).

The right of the bank to apply deposits to the extinguishment of the depositor's indebtedness as it matures grows out of the doctrine that the relationship between bank and depositor is that of debtor and creditor. The bank holds a lien upon the deposits in its hands to secure the repayment of the depositors' indebtedness, and may enforce that lien as the debts mature by applying the debtor's deposits upon them, thus setting the two off against each other.

3 Am. & Eng. Ency. of Law (2 ed.), 835.

2 Morse on Banks and Banking, Sec. 559.

*Park Bank v. Schneidermeyer*, 62 Mo. App. 179.

In an action against a bank to recover the amount of a general deposit the bank may show that it held notes of the depositor for an amount which equaled his deposit, and that the deposit had been applied to the payment of the notes under pleas to the effect that it was never indebted to the plaintiff as alleged, and that it did not have in its possession the sum sued for or any sum deposited with it by the depositor; and to make such defense it is not necessary for it to file a plea of set-off.

*Durkee v. National Bank of Florida*, 102 Fed. 845.

*Bank v. Brewing Co.*, 50 Ohio St. 151.

A bank has the right to apply to the payment of a depositor's note not only all funds in the bank when the note matures, but all funds afterwards received, as well as proceeds of commercial paper owned by him and left with the bank for collection.

*Muench v. Valley Bank*, 11 Mo. App. 144.

*First Nat. Bank v. City Natl. Bank*, 102 Mo.

App. 357; (76 S. W. 489).

When a depositor opens an account in a bank that very act, in the absence of an agreement to the contrary, authorizes an appropriation of his deposit balance to any matured claims the bank may hold against the same as if he had then executed an agreement in writing to that effect.

60 N. Y. Supp. 722.

*Myers v. N. Y. Co. Bank*, 55 N. Y. Supp. 504, 5.  
Morse on Banks and Banking, Secs. 324, 328,  
337.

42 N. W. 434.

A valid novation cannot be accomplished without an agreement of the parties to extinguish the old debt and substitute for it a new debt against another party, which is not accomplished by the mere assumption of the existing debt by a third party.

*Miles v. Bowers*, 49 Or. 429.

One of the essential elements to a novation is that there should have been an extinguishment of the old debt, and another is that there should have been a mutual agreement between all of the parties that the old debt should become the obligation of a new debtor.

*Kelso v. Fleming*, (3 N. E. 830); 104 Ind. 180.  
*Miles v. Bowers*, 49 Or. 452.

There must be a release from the prior obligation.

*Miles v. Bowers*, 49 Or. 433.

*Kelso v. Fleming*, 3 N. E. 830.

*Chenoweth v. National Building, etc.*, 53 S. E. 559, 561.

*Hill v. Warner*, 50 N. E. 582.

It has been said that in every novation there are four essential requisites:

1. A previous valid obligation.
2. The agreement of all the parties to the new contract.
3. The extinguishment of the old contract.
4. The validity of the new one.

*Hayward v. Burke*, 37 N. E. 847.

A novation is never presumed, but must be established by the full discharge of the original debt by the express terms of the agreement or the acts of the parties, whose intention must be clear.

*Chenoweth v. National Building, etc.*, 59 W. Va. 653; (53 S. E. 561).

Bradbury's acts as president were binding on the Kendrick bank, and no formal vote or authorization of the board of directors was necessary.

*Columbia Nav. Co. v. Vancouver*, 32 Or. 532.

*Wehrung v. Portland, etc.*, 61 Or. 52.

*Aldrich v. Chemical Bank*, 176 U. S. 618.

When the Portland bank increased the loan to \$10,000, crediting the Kendrick bank with the money, under an agreement that the Portland bank might, when it elected to do so, apply any deposit the Kendrick bank had, in repayment of the debt, the deposit could be so applied, *no matter whose debt it was*. The Kendrick bank could not adopt part of the transaction (taking the money) without adopting all of it.

*Ladd & Tilton Bank v. Commercial, etc.*, 130 Pac. 975.

*Roe v. Bank of Versailles*, 67 S. W. 303; see page 308 (M).

#### ARGUMENT.

It seems scarcely necessary to further discuss this case. The statement of the controversy, with the testimony we have quoted and the points and

authorities cited, must be convincing that the appellant has no standing in a court of law to enforce the claim it is urging, and that the judgment of the district court is the only one that could have been rendered in this action.

Not only the oral evidence, but the correspondence between the two banks, is undisputed, to the effect that the loan was made to the Kendrick State Bank and not to Bradbury individually. That the debt to the Portland bank was that of the Kendrick bank is also strongly evidenced by the fact that Bradbury had a credit on the books of the Kendrick bank to the extent of the full amount of the loan, or practically so, during the entire time that the loan existed, and when his bank failed, there was fully ten thousand dollars to the credit of Bradbury, which sum the depositors' committee compelled him to turn over to them in lieu of a lot of notes issued to take the place of an account carried as "Bad Debts," for which no consideration had been received and which could not have been collected and which notes did not even purport to be due for nearly four years.

Then again the testimony of Bradbury further discloses that when he came to Portland in December, 1911, to secure for his bank an additional five thousand dollars, and when he gave his note to evidence the ten-thousand-dollar debt due the Portland bank, he, on behalf of the Kendrick bank and as its president, authorized the Portland bank to apply at

any time it saw fit the moneys the Kendrick bank might have on deposit with the Portland bank in payment of his note to the Portland bank.

Therefore if the debt in question was Bradbury's debt and not the Kendrick State Banks' debt, the Portland bank had authority to and was justified in applying the Kendrick bank's balance in payment of the acts to the extent the deposit would do so. It must also be borne in mind that to enable the Kendrick bank to reopen the Portland bank surrendered one hundred shares of that bank's stock which was valuable and would have paid the debt due the Portland bank. It is too plain to require argument that this stock must be returned to the Portland bank before the Kendrick bank can be heard to make its present contentions.

We submit that if it should now be held that the loan under consideration was the personal loan of Bradbury and not a loan to the Kendrick bank, then such loan was made not by agreement of the parties, but in spite of their agreement and by virtue of a contract made for them by the court.

It is unnecessary to consider the authorities cited by plaintiff in error to the effect that there can be no recovery against an undisclosed principal on a note signed by an agent in his own name. Respondent is not making such contention nor suing on any note, but is seeking to recover on the contract of

the parties of which the note is a mere incident.  
(12 L. R. A. 223.)

We respectfully insist that the judgment of the District Court was right and should be affirmed.

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